A HISTORY

OF THE REGION OF

PENNSYLVANIA NORTH OF THE OHIO AND WEST OF THE ALLEGHENY RIVER,

OF THE

INDIAN PURCHASES, AND OF THE RUNNING OF THE SOUTHERN, NORTHERN, AND WESTERN STATE BOUNDARIES.

ALSO,

AN ACCOUNT OF THE DIVISION OF THE TERRITORY FOR PUBLIC PURPOSES, AND OF THE LANDS, LAWS, TITLES, SETTLEMENTS, CONTROVERSIES, AND LITIGATION WITHIN THIS REGION.

BY

HON. DANIEL AGNEW, LL.D.,

LATE CHIEF JUSTICE OF PENNSYLVANIA.

PHILADELPHIA:
KAY & BROTHER,
LAW PUBLISHERS, BOOKSELLERS, AND IMPORTERS.
1887.

COLLINS PRINTING HOUSE,
705 Jayne St., Phila.

PREFACE.

Probably no part of Pennsylvania is more interesting in its history, settlement, titles, and protracted litigation than that portion lying north of the Ohio and west of the Allegheny River. A century having elapsed since its purchase of the Indians, and the passage of the laws regulating its appropriation and titles, few lawyers are living familiar with these subjects.

The legislation peculiar to this region was unfortunate, and gave rise to contests which for many years retarded improvement, and rendered titles uncertain. It was my fortune to begin practice when lapse of time and the Statute of Limitations began to urge a final settlement of the disputes between the "warrantees" and the "settlers." In the winter of 1829–30 accident, or good fortune, threw into my hands the second volume of Charles Smith's edition of the Laws of Pennsylvania, containing his exhaustive note (156 pages) on the Land Laws. The study of this was my preparation for a large practice in land titles.

In December, 1818, John B. Wallace, Esq., had conveyed a large body of land, in Beaver County, to the Farmers and Mechanics' Bank of Philadelphia. In 1832 the bank, finding it necessary to act promptly, sent out

its agent, William Grimshaw, Esq., a lawyer, better known as a compiler of minor histories and school-books. He compromised with many settlers, yet many were left against whom ejectments were brought, causing long litigation. I was largely employed, and became familiar with the disputes between the warrantees and settlers.

The history of this region is so blended with the legislation relating to it, it is impossible to separate them. It is not only interesting, but necessary therefore to take a historical view of the condition in which this northwest territory was found, when the Indian title was relinquished, and the laws were passed relating to it.

The number and variety of the original titles and their ramifications are so great they must be historically considered in order to understand them.

Not more than three or four lawyers remain who were contemporary with the questions involved; and perhaps not another beside myself willing to undertake the labor of perpetuating the events which entered into them.

Hoping that the account given in the following pages will be interesting and useful, I present them to the profession and the public.

DANIEL AGNEW.

Beaver, October, 1886.

CONTENTS.

CHAPTER I.

PAGE

General Situation of Northwestern Pennsylvania before the Purchases of the Indians in 1784, 1785, and 1789 . 1

CHAPTER II.

Relating to the Purchases of the Indians 13

CHAPTER III.

Of the Depreciation Lands 19

CHAPTER IV.

The Donation Lands 32

CHAPTER V.

The Western and Northern Boundaries of the State, and part of the Southern 58

CHAPTER VI.

The Erie Triangle 66

CHAPTER VII.

PAGE

The Reservations 73

CHAPTER VIII.

The Allegheny and Beaver Reservations 79

CHAPTER IX.

Reservations at Erie, Franklin, Warren, and Waterford . 102

CHAPTER X.

General Disposition of the Lands under the Act of April 3, 1792 117

APPENDIX.

Address of Daniel Agnew at the Dedication of the New Court-house of Beaver, Penn'a 167

Report of General Wm. Irvine, agent of the State on the Donation Lands 196

Letter of David Redick, relative to the Allegheny Reservation of 3000 acres 210

Address of Cornplanter, or Captain Abeal, before the Supreme Executive Council of Pennsylvania . . 212

PAGE

Account of Ft. McIntosh and of the French Forts at Presque Isle, Le Bœuf, Machault or Venango, and Du Quesne 220
Fort McIntosh 220
Presque Isle 225
Fort le Bœuf 226
Fort Machault or Venango 228
Fort Du Quesne 229

Deed of John B. Wallace to the Farmers and Mechanics' Bank of Philadelphia 232

Memorandum of deed from Maurice and William Wurts and Ham Jan Huidekoper to Meredith and Day . . 234

Index 237

HISTORY

OF THE

TERRITORY, SETTLEMENT, AND LAND TITLES NORTH OF THE OHIO AND WEST OF THE ALLEGHENY RIVER.

CHAPTER I.

GENERAL SITUATION OF NORTHWESTERN PENNSYLVANIA BEFORE THE PURCHASES OF THE INDIANS IN 1784, 1785, AND 1789.

THE state of the Western country, between the years 1780 and 1796, had a direct bearing upon the condition of the territory, and the land titles, within that section of Pennsylvania lying north of the Ohio and west of the Allegheny River. This portion is within the last purchases of the Indians at Fort Stanwix in 1784, Fort McIntosh in 1785, and Fort Harmar in 1789. It is a matter not only of historical interest, but essential to a proper understanding of the land laws, land titles, and general history of this region, that the facts bearing upon its situation should be grouped in a short detail.

France, Spain, and England were the three great powers which, in the seventeenth and eighteenth centuries, contended for the dominion of the northern half of the new continent. Spain pursued her designs in southern fields, France in northern, and Great Britain between the two. The Appalachian chain of mountains, running northeasterly and southwesterly, parallel to and a few hundred miles inland from the Atlantic coast, long formed a barrier to the English advance into the interior of North America. But France, entering the Gulf of the St. Lawrence, and ascending that river, found her way in the rear of that great mountain range, into the heart of the continent.

The world has rarely witnessed methods pursued similar to those of the French kings in the conquest of the wilds of America. No great army landed on these shores with banners flying, driving before them peaceful inhabitants. But religion, knowledge, and chivalry made their way slowly from the St. Lawrence to the distant Mississippi, carrying with them the influence of peace and the guise of friendship. Missionaries of the Cross, filled with zeal and possessing much of the learning of the age, were found in the wigwam of the Indian, and on the moss-carpeted floor of the wilderness, teaching the doctrines of Christ, and some of the ideas of civilization. Here toiled

priest and chevalier—Champlain, Le Caron, Mesnard, Brebœuff, Allouez, Marquette, Joliet, La Salle, Hennepin, De Tonti (Italian), Frontenac, and others, many of whom imprinted their names upon the soil they trod.

France, following the river Ottawa, it chanced, discovered Lake Huron first, and thence spread over the country adjacent to Lakes Michigan and Superior, reaching the Illinois and Mississippi rivers. Later she found the straits leading into Lake Erie, and founded Detroit; in the meantime having discovered Ontario. Lake Erie was the last to be reached, owing to the adoption of the northern route by the Ottawa first, and to the Erie region being inhabited by the league of the warlike Iroquois, who presented a formidable barrier to progress in that direction.

Though some of the British colonies were planted as early as 1620, and even before, along the Atlantic coast, it was not until the middle of the next century the English broke over the Allegheny mountain range and began the contest with France for the possession of the western territory, at the junction of the rivers where Pittsburgh now stands.

At this time the western tribes of Indians were under the influence of the French, who had pushed their way to Presque Isle, on Lake Erie,

and built forts at Le Bœuf, above on French Creek, and at Venango, at its mouth.

The first step taken by the Colonial government was to ascertain the feelings of the Indians beyond the Allegheny River, and their number and strength; it being understood that they were declining in their friendship for the French. For this purpose, Conrad Weiser, a prominent citizen of Berks County, familiar with the Indian tongues, was sent out under instructions from the President and Council of Pennsylvania. He kept a minute journal, setting out from his home August 11, 1748, and reaching Logstown, on the north bank of the Ohio, on the 27th of August. His mission was faithfully performed, and favorable results accomplished.

In December, 1750, George Croghan, an Indian trader, as the representative of Governor Hamilton, of Pennsylvania, held interviews with the Indians at Logstown, and made a treaty with some of the Six Nations, and the Delawares, Shawanese, Wyandots, and Twightwees. The next most memorable was the visit of Washington on behalf of Governor Dinwiddie, of Virginia, to the French commandant at Le Bœuf. The territory surrounding the confluence of the Monongahela and the Allegheny was then supposed by Virginia to belong to her. He set out in November, 1753, and

reached Le Bœuf on the 11th of December. His journal, kept in detail, was considered so important that it was published by Virginia. The result of his mission was the discovery of the intention of the French to hold the head of the Ohio, and the country northward and westward, under the alleged discovery of La Salle, about eighty years before. In view of this fact the Governor and Council of Virginia resolved to send a force to the head of the Ohio, and plant a fort and station there. The Assembly voted the means, and a small army was raised, commanded by Col. Fry, who died before the advance, and was succeeded in command by Washington. When Washington, with a part of his force, reached the Monongahela, he there encountered a small force of the French, sent from Fort Du Quesne, at the junction of the rivers, under command of Jumonville. The French were defeated, and Jumonville killed, under circumstances the French called assassination—a charge always denied by Washington. This was followed by the battle of the Great Meadows, with a larger force sent from the fort, the retreat of Washington, and building of Fort Necessity, and, finally, its surrender and evacuation by him.

The French having thus succeeded in holding possession of the territory at the head of the Ohio, Great Britain resolved upon stronger measures to

dislodge them. This led to the memorable expedition under General Braddock, and his defeat on the 9th of July, 1755, near the mouth of Turtle Creek, ten miles above Pittsburgh. He had come by way of Cumberland and Wills Creek. His defeat for a time confirmed the French possession, then extending from the Gulf of St. Lawrence to the southern shore of Lake Erie, and thence from Presque Isle, where Erie now stands, down the Ohio (as the Allegheny was then called) by a chain of forts at Presque Isle, Le Bœuf, and Venango, to Fort Du Quesne, at the junction of the rivers. It was by this route down the Allegheny, the French, under Mons. Contrecœur, a French officer, in April, 1754, descended with three hundred canoes, and one thousand French and Indians, and eighteen cannon, drove off Ensign Ward, of the Virginia troops, and built Fort Du Quesne, named after the French Governor of Canada. The defeat of General Braddock was a great disaster, and for a time retarded the efforts of the British.

The next attempt by the English to dislodge the French took place in 1758, by way of the Pennsylvania route, through the region now of Bedford and Westmoreland counties, and by way of Ligonier and Bushy Run. This expedition, under General John Forbes, was successful, and

Fort Du Quesne became Fort Pitt, soon to be known as Pittsburgh. But the French were not expelled from the western country, and though held in check by Fort Pitt, they and their Indian allies occupied the country north of the Ohio and west of the Allegheny; the Indians making frequent incursions southward and eastward of these streams, bringing terror to the few scattered inhabitants by their barbarities—killing, scalping, and taking many prisoners, and carrying women and children into their western haunts.

The French power was broken by the fall of Quebec and the capture of Niagara, yet it did not immediately surrender. The French army retired to Montreal, which became the centre of their operations until September, 1760, when the French Governor of Canada, threatened by the near approach of two English armies, surrendered Montreal, Detroit, Mackinaw, and all other posts within his dominion, to General Amherst, the English commander.

Following this came the Treaty of Paris, of 1763, by which France ceded to Great Britain "her pretensions to Nova Scotia, or Acadia, and in full right Canada, with all its dependencies; and agreed that the boundary of division between the territories of Great Britain and France should be a line drawn along the middle of the Mississippi River to

the river Iberville, thence by the middle of that river and the lakes Maurepas and Pontchartrain to the sea;" surrendering to Great Britain all the territory on the left, or east side of the Mississippi, excepting the town and island of New Orleans.

Peace, however, did not come to the western country. In 1762 Pontiac, the great Ottawa chief, fearful of English ascendency, was forming his grand confederacy of all the Indian tribes, which took final shape in a general council at the river Ecores, in April, 1763. This was followed by Pontiac's war, which for more than a year raged with terrific violence. During that time no safety for the white man lay in Western Pennsylvania. The Indians besieged Fort Pitt so closely it was in constant danger. Their incursions were carried far beyond the Allegheny River to the Allegheny Mountains, frequently passing their defiles into the region of the Juniata, carrying terror, massacre, and destruction in their paths.

The siege of Fort Pitt brought about the expedition of Colonel Henry Boquet, with a force of about five hundred men, in the year 1764, to relieve it. He was ambushed at Bushy Run by the Indians, who, having notice of his approach, left the investment of Fort Pitt to meet and destroy him. For a time defeat seemed inevitable, and many of his troops were killed and wounded; but by a skil-

ful manœuvre, attacking the Indians in their flank and rear, he finally put them to flight with great loss, his own, however, in the beginning being greater. From Fort Pitt Colonel Boquet made his expeditions against the Indians in what is now the State of Ohio, in the autumn of 1764. The relief of the siege of Detroit by the English, and their possession of the lake country, put an end to Pontiac's war. The Indian troubles, however, did not cease, and Western Pennsylvania continued unsettled beyond the Allegheny River. This, at first, was largely owing to the influence of the French settlers along the lakes and in the western territory, whose bitterness toward the English constantly made the English nation odious and hateful to the Indians. This animosity came to a head in 1774, in the war known as Lord Dunmore's. The settlers, then chiefly from Virginia, had pushed their improvements to the Ohio River and were advancing into Kentucky. Reports of Indian outrages, many untrue, were fanned into a flame among the excited whites along the Ohio, above and below Wheeling. These culminated in the massacre of two small bodies of Indians by Michael and Daniel Cresap, one below Wheeling at Captina, and the other at Baker's, opposite the mouth of Yellow Creek. They became the immediate causes of the war of 1774. It was in this state of hostile feeling

the murder of the family of Logan, the Mingo chief, took place, causing him, to this time the firm friend of the whites, to enter into the struggle against them with an almost frantic zeal, and to glut his revenge in blood.

Now came another blast to fan the flame of Indian wrath against the whites—the war of the Revolution. England, in her effort to subdue the colonies, regardless of the ties of blood and the dictates of humanity, sought the savages, and by every art in her power persuaded them to lift the tomahawk and sharpen the scalping knife against the whites in the West. Outrage and barbarity followed the footsteps of the Indians in their many incursions into the settlements. The entire territory north of the Ohio became unsafe. The declaration of peace between the United States and Great Britain by the treaty of peace of 1783 did not end the Indian warfare. These sons of the forest saw the march of white settlements still pressing onward toward their hunting-grounds, and with the feelings natural to all men conceived that their rights were endangered, and a country believed to be their own about to be wrested from them by violence. In these feelings they were encouraged by certain white renegadoes, who had acquired influence among them.

The doctrine of conquest, however justified by

so-called Christian kings, to expand their possessions and power, can scarcely be allowed as a justification for war, desolation, and seizure of land from those who inhabit it. Civilization pleads the barbarism of the natives; yet the pure principles of the doctrine of the Prince of Peace will find it hard to defend the plea. It is the proud distinction of Pennsylvania that all the land she owns she bought. But this claim does not turn aside the trend of history. The Indian war was marked on the side of the whites by cruelty. The massacre of the Christian Moravian Indians at Gnadenhutten, on the Tuscarawas, was one of the most fiendish acts that ever disgraced civilized men, and whose particulars freeze the blood and make the heart stand still.

This state of affairs led to expeditions against the Indians—Crawford's in 1782, Harmar's in 1790, and St. Clair's in 1791—all of which suffered defeat. The Ohio country remaining unsafe, outside of a few forts, the next step was the organization of an army under General Anthony Wayne. St. Clair's defeat, in 1791, was attributed to the want of discipline of his troops, largely militia who had not undergone drill. To obviate this defect, General Wayne assembled his troops on the elevated plain a short distance below the present town of Economy, on the Ohio, in what is now Beaver County. His encampment has since been known as Legionville,

a few perches east of the present Pittsburgh, Fort Wayne, and Chicago Railway, which here skirts the right bank of the Ohio River. This encampment lasted throughout the winter and spring of 1792–3. In April, 1793, he moved his army to Fort Washington (now Cincinnati), remaining there till the spring of 1794. Thence he made his expedition to the Maumee. On the 20th of August he gave battle to and defeated the Indians at Fallen Timbers. In this engagement the Indians were completely routed, and their power broken. Afterwards he returned to Fort Greenville, which he made his headquarters, where, on the 3d of August, 1795, he concluded a treaty of peace with the Indians which put an end to the war. This treaty was ratified by the Senate of the United States on the 22d of December, 1795—a date which has since played a conspicuous part in the controversies upon the land titles of Western Pennsylvania under an Act of the Legislature of the 3d of April, 1792.

CHAPTER II.

RELATING TO THE PURCHASES OF THE INDIANS.

It is proper now to refer to the acts which gave Pennsylvania title to the territory north and west of the Ohio and Allegheny rivers.

By the treaty made at Fort Stanwix (now Rome, in New York), on the 5th of November, 1768, between the Penns and the Six Nations, the Indian title had been extinguished on the east side of a boundary beginning where the northern State line crosses the North Branch of the Susquehanna River, and running a circuitous course by the West Branch of that river to the Ohio (Allegheny), at Kittanning; thence down that river to where the western boundary of Pennsylvania crosses the main Ohio. Thence the line ran southward and eastward by the western and southern boundaries of the State, to the east side of the Allegheny Mountains. By a treaty made October 23, 1784, also at Fort Stanwix, between the commissioners of the State of Pennsylvania and the Six Nations, viz., the Mohawks, Oneidas, Onondagas, Senecas, Cayugas, and Tuscaroras, all the remaining In-

dian lands in Pennsylvania were purchased. The eastern boundary was that of the western boundary of the purchase of 1768.

As the boundaries of the treaty of 1784 are important to the subject of this treatise, they are copied, viz:—

"Beginning on the south side of the river Ohio, where the western boundary of the State of Pennsylvania crosses the said river, near Shingo's Old Town, at the mouth of Beaver Creek, and thence by a due north line to the end of the forty-second and beginning of the forty-third degrees of north latitude; thence by a due east line, separating the forty-second and forty-third degrees of north latitude, to the east side of the East Branch of the river Susquehanna; thence by the bounds of the late purchase made at Fort Stanwix, the 5th day of November, Anno Domini 1768, as follows: 'Down the East Branch of the Susquehanna, on the east side thereof, till it comes opposite the mouth of a creek, called by the Indians Awandac, and across the river, and up the said creek, on the south side thereof, along the range of hills, called Burnett's Hills by the English, and by the Indians ————; on the north side of them, to the head of a creek, which runs into the West Branch of the Susquehanna, which creek is by the Indians called Tyadaghton, but by Pennsylvanians Pine Creek,

and down said creek, on the south side thereof, to the said West Branch of the Susquehanna; then crossing the said river, and running up the same, on the south side thereof, the several courses thereof to the fork[1] of the same river which lies nearest to a place on the river Ohio (Allegheny), called Kittanning, and from the fork by a straight line to Kittanning aforesaid; and then down said river by the several courses thereof, to where the western boundary of the said State of Pennsylvania crosses the same river, at the place of beginning.' "

It will be noticed that, in this deed, the western boundary is said to cross the Ohio River, near Shingo's Old Town, at the mouth of Beaver Creek. The Indian town at the mouth of Big Beaver Creek was Sawkunk, or Sawkung. I have not heard of any Shingo's Old Town at the mouth of Little Beaver. The Big Beaver seems to be the creek referred to, though the boundary, as afterwards run in 1785–6, fell a few yards below the mouth of Little Beaver, twelve miles below the Big Beaver. In 1753, Washington, in his journal, said Shingiss, king of the Delawares, lived about two miles below the forks of the Ohio (Pittsburgh). It is possible "Shingo's Old Town" merely indicated his chieftaincy, and not the name of the

[1] This fork was known as the "Canoe Fork," or more latterly as the "Cherry Tree Corner."

town. This uncertainty of the western boundary is referred to by General Wm. Irvine in his report (see Appendix), and had much to do with preventing the donation surveys from being laid near to the western boundary.

The Wyandot and Delaware Indians then occupied a large territory west of the Allegheny River, and not being parties to the treaty made at Fort Stanwix, in 1784, a treaty with them was held by the same commissioners at Fort McIntosh (now Beaver), in January, 1785, and their title extinguished by a deed of the 21st of January. This deed is in terms and boundaries the same as that of October 23, 1784. Thus the Indian title to all the lands in Pennsylvania was finally extinguished by purchase under the humane and enlightened policy which characterized the course of Wm. Penn and his heirs.

At the time of the treaty of 1785, the State was not the proprietor of the northwestern angle of the present territory of the State, called the Erie Triangle. A subsequent treaty was made in 1789, at Fort Harmar, for the purchase of the Indian title to the "Triangle." It will be noticed hereafter.

In consequence of the Declaration of Independence of the Colonies in 1776, the title of the Penns became vested in the Commonwealth in sovereignty. This was declared by the divesting Act

of the Assembly, passed on the 27th November, 1779.[1] The Act saved, however, all titles granted by the Penns before the 4th day of July, 1776; and all private estates and lands of the Penns, including surveyed manors or tenths, and certain quit-rents.

The Commonwealth having become the sovereign proprietor of all the lands within the State, and intending and anticipating the purchase of the Indian title, provided by an Act of 12th March, 1783,[2] for the appropriation of all that portion of the purchase of 1784 and 1785 north of the Ohio and west of the Allegheny River and the Cagnawaga (now Conewango) Creek, by dividing the same into two large and separate sections. These were—

1. For the redemption of the Certificates of Depreciation, given to the officers and soldiers of the Pennsylvania Line, in pursuance of an Act of 18th December, 1780,[3] providing that the certificates should be equal to gold or silver, in payment of unlocated lands, if the owners should think proper to purchase such.

2. In fulfilment of the promise of the State, in a resolution of March 7th, 1780, to the officers and soldiers of the Pennsylvania Line to make them certain donations in lands, according to their rank in the service.

[1] 1 Smith's L. 479. [2] 2 Ib. 62. [3] 2 Ib. 62.

The Act of 12th March, 1783, therefore divided this territory by a due west line, running from Mogulbughtiton Creek, on the Allegheny River above Kittanning (probably Pine Creek), to the western boundary of the State. The course of this line runs between seven and eight miles south of the present city of New Castle, which lies in the fork of the Shenango and Neshannock creeks. The land south of this boundary was appropriated to the redemption of the Depreciation Certificates, and became known as the "Depreciation Lands." Out of this section were reserved to the State two tracts, of 3000 acres each; one at the mouth of the Allegheny, where the city of Allegheny now stands; the other at the mouth of the Big Beaver Creek, on both sides, including Fort McIntosh (now Beaver). The land north of the line above described was appropriated to donations to the soldiers of the Pennsylvania Line for their services in the Revolutionary War, and became known as the "Donation Lands."

These appropriations of territory in the last purchases, being first acted upon by the State, require their disposition to be first considered.

CHAPTER III.

OF THE DEPRECIATION LANDS.

In order to encourage enlistment, and to reward those who in the Revolutionary War entered into the military service in the Pennsylvania Line, and in the State Navy, the State promised to pay them in a sound currency, and also to secure to them donations of land. In pursuance of this patriotic purpose, and of the recommendation of Congress, of the 15th of May, 1778, recited in the Act, the State, by the Act of March 1, 1780,[1] made provision for the State troops, and the officers and marines of the navy, extending these provisions to the widows and children of those killed in battle. An important supplement to that Act, passed October 1, 1781,[2] reciting the Act of Congress of 13th June, 1781, containing important additional provisions, may be consulted by those desiring further information. These provisions were continued by subsequent Acts.

This encouragement to enter the service had become necessary owing to the diversion produced

[1] 1 Smith's L. 487. [2] 2 Ib. 8, 9.

by the occupancy of Philadelphia by Lord Howe, in 1777–8, and the distress of the American army lying at Valley Forge. Philadelphia became the refuge of royalists and neutrals, and the spirit of the people was much broken. Distress pervaded, and gloom fell upon all ranks for a time. An excellent view of this state of affairs can be realized from the diary of one living at the time, James Allen, a neutral, published in the 'Pennsylvania Magazine of History and Biography.'[1]

By the Act of December 18th, 1780,[2] the State provided for the settlement of the depreciation from the Continental currency in the pay of the Pennsylvania Line and State Navy, and for issuing certificates for the same. They were made receivable in payment of confiscated estates and unlocated lands. The confiscation of the estates of traitors and seditious persons, many by name, others by description, owing to the number of persons flocking to Lord Howe for protection, and of those adhering to the crown of Great Britain (then commonly called royalists), had been provided for in the Act of 6th March, 1778.[3] The fifth section recited that it was "highly reasonable that the estates of subjects or inhabitants of this State who have engaged in the present most unnatural, unjust, barbarous, and execrable war, and who shall

[1] Vol. 9, for 1885. [2] 1 Smith's L. 522. [3] Ib. 449.

be duly attainted as guilty of treason, should be discovered and applied to the use of the State."

The subject of confiscation is, however, apart, and it is as payment for "unlocated lands" that the certificates are being noticed. These certificates were included in the Act of 3d April, 1781,[1] directing the mode of adjusting and settling the payment of debts and contracts entered into and made between the 1st day of January, 1777, and 1st day of March, 1781. The 5th section gave the scales of depreciation for the years 1777, 1778, 1779, 1780, and 1781, as compared with silver and gold. In July, 1777, the scale was three to one; in 1778 it rose to six to one; in 1779, to forty-one and a half to one; in 1780, to seventy-five to one; and in 1781, to seventy-five. Afterwards the scale of depreciation was published from time to time, under the Act of 23d December, 1780.[2]

For the purpose of carrying out the legislation of the State as to Pennsylvania troops, the Supreme Executive Council, on the 23d of April, 1781,[3] resolved "that James Stevenson, John Nicholson, Wm. Goforth, Robert Levers, Henry Haller, John Thom, John Beaton, Samuel Boyd; Henry Slagle, and Samuel Laird, or any two of them, of whom the said James Stevenson *and* John Nicholson

[1] 1 Smith's L. 519.

[2] 12 Colonial Records, 611–12, 618, 681, 716. [3] 12 Ib. 703.

always to be one, be appointed commissioners for the payment of one-third of the depreciation certificates, and for granting new certificates as directed by the said Act."

The said "auditors" were also empowered to correct certain mistakes, take receipts on certificates surrendered for money paid on account, and to pay strict regard to the law confining the payment to officers and soldiers in the actual service.

After these Acts, provisions, and resolutions of Council came the Act of 12th March, 1783,[1] before referred to, describing and appropriating the land for the redemption of the certificates of depreciation given to the officers and soldiers of the Pennsylvania Line. The territory so appropriated is thus described: "Beginning where the western boundary of this State crosses the Ohio River; thence up the said river to Fort Pitt; thence up the Allegheny River to the mouth of Mogulbughtiton Creek; thence by a west line to the western boundary of this State; thence south by the said boundary to the place of beginning."

This line west from the mouth of Mogulbughtiton (Pine) Creek, was run by Alexander McClean, Esq. See the interesting letter of Gen. William Irvine to President Dickinson, August 18, 1785.[2] The land to the north of this line was by the same

[1] 2 Smith's L. 62.

[2] 11 Penn. Arch. 514; also 16 Col. Rec. 340.

Act of 12th March, 1783, appropriated to donations to the officers and soldiers of the Pennsylvania Line, and will be treated of hereafter.

Out of the land appropriated for the redemption of the certificates of depreciation two reservations, of 3000 acres each, were made by the Act, which will also be treated of in a proper place.

The Act of 1783 required the "Depreciation Land" to be laid out by the Surveyor-General, under the direction of the Supreme Executive Council, into lots of not less than two hundred acres, and not more than three hundred and fifty acres, numbering them numerically on the draft or plot of the country. As soon as the same, or on hundred lots thereof, should be surveyed, the Surveyor-General, Secretary of the Land Office, and Receiver-General, were required to proceed to sell, in numerical order, at such times and places, and under such regulations as should be appointed by the Supreme Executive Council; the full consideration bid at such sales to be paid in silver or gold, or in depreciation certificates.

Intelligence of Indian hostilities caused the Council to delay the order to the Surveyor-General to proceed to survey these lands until the 10th of June, 1783,[1] when the instructions to him were issued, and he was directed to proceed with the

[1] 13 Col. Rec. 596; and 10 Penn. Arch. 53, 54.

work immediately. He was authorized to begin with the surveys of the two tracts of 3000 acres reserved for the use of the State, and then to survey the remainder, and lay out and number the lots contiguous to each other, and thus to form an accurate draught or map of the country. On the map were to be noted the courses and depths of the waters, places of mines, sites for towns, the quantity of each lot, and a precise description. The courses and distances were to be determined with precision and distinctly marked, retaining the natural boundaries, and dividing the waters as well as the nature of the ground would admit: care and nicety in the work were required, and those employed were forbidden to give information of the quantity and advantages of the lots, except in the return made to the Council. Without attributing to Daniel Leet, Surveyor of the Second Depreciation District, anything improper, his general knowledge of the country along the Ohio, above his own district, enabled him to obtain that large and valuable body of lands on the Sewickly Bottom, which descended to his daughter, the late Mrs. Shields, wife of the late David Shields. In the performance of the work the advice and assistance of General William Irvine were to be furnished.[1] He was then the military commandant at Fort Pitt.

[1] 10 Penn. Arch. 56.

It would seem, even at that early day, men were found disposed to advance their private interest by the sacrifice of the public good. Information to this effect (presumably from Gen. Irvine)[1] led Secretary John Armstrong, on the 2d July, 1783,[2] to address a letter to the Surveyor-General, John Lukens, advising him of combinations formed to engross large tracts of the best part of the land assigned by law for the redemption of depreciation certificates, and plans laid to conceal the relative value of the lots, and enjoining the utmost care to prevent all abuse of trust. A second point of apprehension was the unlawful breaking in upon the tract appropriated for donations. The 6th section of the Act of 1783 had made void all grants of lands within the Depreciation and Donation tracts by any Indian nation, the late proprietaries, and other persons. On the next day, July 3, 1783, General Irvine was, by letter, thanked for his communication of 3d June, and his attention asked in giving care to the two tracts appropriated to the State.[3]

For the purpose of surveying the lands appropriated to the payment of the certificates of depreciation, this territory was divided into five principal districts, running from the Ohio northward, and numbering from the west to the east. District No. 1, allotted to Alexander McClean, deputy sur-

[1] 10 Penna. Arch. 66. [2] Ib. 65. [3] Ib. 66.

veyor, lay nearest to the western boundary of the State. District No. 2 was allotted to Daniel Leet and ——— Richie, deputy surveyors, though Leet seems to have made the surveys. No. 3 was divided among Nathaniel Braden, William Alexander, Samuel Nicholson, Ephraim Douglass, and Samuel Jones; it is commonly called Braden's District. No. 4 was allotted to James Cunningham; and No. 5 to Joshua Elder and John Morris, deputy surveyors.[1]

On the 29th of August, 1785,[2] the Surveyor-General reported to the Council that he had received upwards of one hundred and forty returns of survey of the land appropriated to the redemption of the depreciation certificates, and daily expected more. Thereupon the Council ordered him[3] to furnish a map descriptive of the lots reported. From time to time surveys were reported as they came in from the several districts; these returns seem to have come in irregularly.

September 12, 1785,[4] the Supreme Executive Council ordered 100 lots in Daniel Leet's district to be sold; and on the 11th of November, 1785,[5] ordered the sale of 43 lots remaining in the same

[1] The instructions of the Surveyor-General are not to be found in the Land Office.

[2] Penna. Arch. 506.

[3] 14 Col. Rec. 527–8.

[4] 10 Penna. Arch. 541.

[5] 14 Col. Rec. 577.

district. On the 18th November, 1785,[1] the Council directed the Depreciation Lands to be sold by the acre, that the city auctioneer (Philadelphia) be employed to sell them, and that no warrant directing a return of survey should issue. The lands having been surveyed in districts and maps made, the last direction was to obviate returns for each lot, for patenting, as was the practice of the Land Office in ordinary cases.

To the orders of the 12th September and 11th November John Lukens, Surveyor-General, David Kennedy, Secretary of the Land Office, and Francis Johnston, Receiver-General, returned[2] on the 26th November, 1785, that they proceeded to the sale of the lots in Leet's district; the quantity sold amounted to 38,202 acres, and amount of cash received was £13,985 14*s.*, an average of a little over 8 shillings and 5 pence per acre. These sales were made at the "Old Coffee-house," in Philadelphia.

December 6, 1785,[3] a report was made by the Surveyor-General, Secretary of the Land Office, and Receiver-General, of sales of the lands in Nathaniel Braden's district — 31,883 acres—for £4402 17*s.* 3*d.*, averaging 2 shillings 6½ pence per acre, and when added to the amount of sales in Leet's district, averaging only five shillings per

[1] 10 Penna. Arch. 537. [2] Ib. 541. [3] Ib. 545.

acre. They therefore recommended a suspension of sales for a time.

On the 12th December, 1785,[1] Francis Johnston, the Receiver-General, informed the Council that the time of payment for the lands sold in Leet's district had expired, and he had reason to believe sundry purchasers did not mean to comply with the terms of sale, and he submitted to Council what steps should be taken.

March 12th, 1787,[2] the Receiver-General reported sales on the 7th instant, at the "Old Coffee-house," of the remaining lots in Leet's district, but to his surprise the 27 lots sold averaged only £5 8*s.* 4*d.* per 100 acres. He postponed the sales until the 10th, when but three lots were sold at the rate of 3 pence per acre. He recommended that the sales in the city, at auction, should cease, as lands so distant could not be sold there. This sale was made under an order of Council, of December 28, 1786,[3] directing sales at the "Old Coffee-house" on the first Monday of March, 1787. This is the last report of sales I have found. It is evident that these western lands were not in demand owing to several reasons. Indian hostilities were then active. Many of the drawn donation lots were sold by the soldiers, especially the privates, at very low prices. In my practice I have seen many of these assignments

[1] 10 Penna. Arch. 547. [2] 11 Ib. 125. [3] 15 Col. Rec. 138.

endorsed on the patents. This fact is also referred to in the report of the Register-General of 12th March, 1787.[1] The whole western territory, north of the Ohio, was then an uninhabited wilderness. This state of affairs continued much later, as will be seen in a letter of General Richard Butler, of August 10, 1790.[2] The disinclination of the State authorities to sacrifice the public lands is seen also in the order of the Council of June 5, 1790,[3] ordering certain lots purchased by John Nicholson to revert to the State. Nicholson had on the 28th of May previous[4] asked to know whether he should retain them.

I have been particular in stating these sales, as the tradition came to me in my early practice that the sales were discontinued in consequence of the low prices brought at the "Coffee-house;" and owing to this fact the Depreciation Lands were taken up by warrant and survey under the Act of 3d April, 1792. On the very day of the passage of this law Daniel Broadhead, then Surveyor-General, had two warrants issued in the names of William Barker and Joseph Williams, for lands opposite to the great falls of the Big Beaver, on which the town of Old Brighton (now part of Beaver Falls) was located. On the 14th of April, 1792, many warrants were

[1] 11 Penna. Arch. 125.
[2] Ib. 715.
[3] 16 Col. Rec. 376.
[4] 11 Penna. Arch. 702.

issued, which were surveyed on Depreciation Lands. On what grounds the officers of the Land Office considered the office open for the sale and settlement of the Depreciation Lands I know not, unless the abandonment of the sales led to the belief that these lands then fell within the general provisions for the sale of the lands within the last purchase. But it was not until the passage of the Act of 22d March, 1813,[1] these titles had the benefit of express legislation. Yet many of the titles so obtained were before the Supreme Court, and this question not raised. In the meantime the depreciation certificates had been declared to be irredeemable if not presented to the Receiver-General on or before the second Tuesday in January, 1807.[2]

No important judicial decisions have been made as to the depreciation titles. The surveys were generally well made, owing to their proximity to Fort Pitt, and the method of sale led to no contests. These surveys were afterwards partly adopted in locations made under the Act of 3d April, 1792. In a few instances this partial adoption led to litigation. Among the most noted instances were the lawsuits upon the two surveys made for General Broadhead, above referred to, in the name of William Barker, surveyed at 440 acres and allowance of six per centum; and Joseph Williams, surveyed

[1] 6 Smith's L. 54. [2] 4 Ib. 263.

at 410 acres and allowance. This litigation began with the century, and was continued with various success until the last case came before Justice Greer, in the Circuit Court of the United States at Pittsburgh, about 1860. I took my share in it until 1851, when I went upon the Common Pleas Bench.

The effect of a partial adoption of the lines of the depreciation surveys under the Act of 3d April, 1792, was decided in McRhea *v.* Plummer. (1 Binney, 227.)

The effect of the Depreciation District lines was considered in Evans *v.* Beatty. (1 Penrose & Watts, 489.) In that case Justice Huston remarked, that when the sale of the Depreciation Lands by auction was abandoned, and the country thrown open to settlement or sale in the ordinary mode, the country was again divided into districts, and surveyors appointed. But he does not state on what grounds *these* lands were considered open to settlement and sale. The districts referred to by him were necessary at all events, owing to the vacant lands interspersed among the Depreciation Lands. The Legislature seems to have considered the Act of 1813 necessary to cure defects and dispel doubts.

CHAPTER IV.

THE DONATION LANDS.

THE Depreciation and Donation lands were the twin progeny of patriotism and necessity. As has been stated already, the northern section of the lands divided by the Act of 13th March, 1783, was appropriated to donations to be made to soldiers of the Pennsylvania Line.

The 5th section[1] of the Act provides, that for the purpose of effectually complying with the letter and intention of the said resolve (mentioned in the preamble), there be, and it is hereby declared to be, located and laid off, a certain tract of country beginning at the "mouth of Mogulbughtiton Creek; thence up the Allegheny River to the mouth of the Cagnawaga Creek;[2] thence due north to the northern boundary of this State; thence west by the said boundary to the northwest corner of the State; thence south by the western boundary of the State to the northwest corner of lands appropriated by this Act for discharging the certificates

[1] Now the Conewango.

[2] 2 Smith's L. 63.

herein mentioned; and thence by the same lands east to the place of beginning; which said tract of country shall be reserved and set apart for the only and sole use of fulfilling and carrying into execution the said resolve."

The 6th section forbade any improvement location, warrant, grant, right, title, or claim under the Indians, the late proprietaries, or other person or persons whatsoever, upon the limits of the two described tracts of country, and made void all such claims. It also put it out of the power of non-commissioned officers and privates to sell their shares of the land until actually surveyed and laid off.

The Act of 1st March, 1780,[1] had previously exempted the soldiers' lands from taxation during the lifetime of the soldier, unless when aliened or transferred. The Act of 16th March, 1785,[2] made the same provision. This exemption from taxation during life led to several important judicial decisions. The Act of 24th March, 1785,[3] followed, "directing the mode of distributing the Donation Lands promised to the troops of this Commonwealth." It referred to the resolution of 7th March, 1780, and the Act of 12th March, 1783, and directed the Surveyor-General to appoint deputies, to be ap-

[1] 1 Smith's L. 487. [2] 2 Ib. 287–8. [3] Ib. 290.

proved by the Supreme Executive Council, to survey and lay off the land into lots; provided what officers and soldiers should be entitled to lands (including Baron Steuben, Inspector-General, and Lieutenant-Colonel Tilghman), according to the rank and pay they held last before they left the service; excepting that no promotion or rank by brevet or commission should entitle, unless where pay had been allowed by the United States, and these donations should not be affected by donations of land promised by Congress. The Comptroller-General was directed to make complete lists of persons, stating their rank and quantity of land, to be laid before the Council, that the Surveyor-General might be able to instruct his deputies as to the number and contents of the lots. The lots were to be of four descriptions, viz: 500 acres, 300 acres, 250 acres, and 200 acres each; a quantity laid off in 500 acre lots, equal to what should be necessary for major-generals, brigadier-generals, colonels, captains, and two-thirds of lieutenant-colonels; in 300 acre lots for regimental surgeons and mates, chaplains, majors, and ensigns; in 250 acre lots for one-third of lieutenant-colonels, sergeants, sergeant-majors, and quartermasters; and in 200 acre lots for lieutenants, corporals, drummers, fifers, drum-majors, fife-majors, and privates.

The deputy surveyors were required to make oath not to select the best lands, or to favor any of these classes to the prejudice of the others. In running the boundaries the surveyors were to define well by marking trees on the lines at short distances, and particularly the angles and corners; and on the northwest corner of each lot the number of the lot should be marked. If the corner should be a post, the number should be marked on a tree in the lot nearest to the corner.

The neglect of the surveyors to perform these directions—a neglect owing to the payment of a fee for each lot surveyed, and a fear of the Indians who were hostile—led to many difficult lawsuits. The territory was divided into districts, for each one of which a deputy surveyor was appointed. In running from the base, or district line, north or south, the surveyor ran a distance required for each lot, and marked its corner. He would there set his compass, taking the course east or west, as the case might be, and direct the axeman to mark a tree or two on the course, and instead of running the line through and marking it as the law contemplated, he would go on in his first direction, north or south. The effect was that the east and west lines were not marked through. The usual mode, after starting north or south from the base or district line, was to run the breadth of four

tracts, marking the corners of each lot, and a tree or two as before stated; then turning east or west, as the survey required, to run across to the opposite corner; then going on in the first direction, north or south, to repeat the same thing, and at the breadth of four tracts to return east or west to the first line, repeating this method until the other line of the district was reached. The return to the first district or base line followed the same method. As a consequence of this mode, owing to the uneven and woody surface of the country, and to mistakes of the chain-carriers, the chaining was often inaccurate, and three out of the four cross lines (east or west) were not carried and marked through: chain-carriers sometimes dropped "pins" by which the count was kept, or failed to "knot" the "outs," as they were called, when the whole number of pins were "stuck." The effect of these errors was that the eastern and western corners of tracts were not opposite to each other, and the lots assumed irregular figures, instead of being rectangular parallelograms. Having tried many boundary disputes in the Donation surveys, I have known tracts to fall short or to overrun as many as fifty acres. The corners being marked and the east and west lines not, the law required, as it was held by the courts, a straight line to be

run from corner to corner. (See Hunt *v.* McFarland.)[1]

Perhaps the most important feature in the direction to survey is that which required the northwest corner to be marked with the number of the lot. As a consequence this "numbered corner" became the "earmark" of the tract, and controlled all other matters of description; even the very place the number occupied on the "General Draft," and the adjoiners stated in the patent. In other words, it wrenched the lot from its place on the draft, and fixed it on the place where the number was found marked on the ground. The reasons given for this control of the "numbered corner" are forcibly stated by Chief Justice Gibson in Smith *v.* Moore,[2] and are worthy of a careful perusal. The principle of the decision is, that the numbered corner is the legal, original, and true index of the ground it occupies, and being marked on the ground by the order of the law itself, it is the conclusive evidence of the identity of the survey, and of the lot attached to it. It must therefore supersede all other evidence. The effect of this primary evidence of identity was, in the case of Dunn *v.* Ralyea[3], to dislocate the lot from the place it fitted on the "General Draft," and to locate it

[1] 2 Wright, 69.

[2] 5 Rawle, 348.

[3] 6 W. & S. 475.

several miles distant, on the ground where the number as marked placed it.

The corner was numbered by cutting on the tree a broad, flat surface, upon which the numbers were sunk with a tool, such as was used by millers in marking the numbers on barrels. These numbers have often been seen fifty and sixty years afterwards, by removing the growths of the tree over the numbers. The marks made in 1785 and 1786 were grown over annually with new wood, made by the downward current of the sap in the summer. The outward mark, when not discovered by an ordinary observer after so many years, would be detected by skilful surveyors by a discoloration of the bark. Sometimes it requires the observer to stand off a number of yards to perceive this discoloration. Often in these very old marks it requires the tree to be "blocked" to prove the existence of the mark. The removal of the supervening growths displays the original cut. This testimony of nature often disposes of questions of survey when no other evidence remains.

When a sufficient number of lots had been surveyed, the law required a connected draft of them to be made, noting the number on each lot, and the draft to be deposited afterwards in the office of the Master of the Rolls, as a public record, to serve when the number is drawn, and the name of the

soldier noted on the lot, in lieu of recording the patents.

In consequence of lapse of time, dying of timber, burning of the woods, and obliteration of the original marks, the location of some of the surveys became uncertain. To remove this doubt the Legislature passed the Act of 24th March, 1818,[1] making the "General Drafts"—that is, the maps of the several districts—the evidence of the location of the lots, and making office copies evidence in courts of competent jurisdiction.

The 13th section of the Act of 24th March, 1785,[2] provided for the distribution of the lots by lottery, the tickets to be drawn from a wheel, well turned round, and kept in safe custody under the direction of a committee of three members of the Supreme Executive Council; the committee judging of the right of each applicant to draw from the wheel.

A major-general was entitled to draw four 500 acre lots; a brigadier-general, three 500 acre lots; a colonel, two 500 acre lots; a lieutenant-colonel, one 500 acre lot and one 250 acre lot; a surgeon, chaplain, or major, two 300 acre lots; a captain, one 500 acre lot; a lieutenant, two 200 acre lots; an ensign or regimental surgeon, one 300 acre lot; a sergeant, sergeant-major, or quartermaster-ser-

[1] 7 Smith's L. 122. [2] 2 Ib. 292.

geant, one 250 acre lot; and a drum-major, fife-major, drummer, fifer, corporal, or private, one 200 acre lot.

The 4th section provided for the issuing of patents for the numbers drawn and the form of the patent. The fees of the surveyors were three pounds for every 500 acre lot; two pounds for 300 acres, and one pound ten shillings for 250 and 200 acre lots; which should include all expenses of chain-bearers, markers, and other charges; to be paid by each applicant, in proportion to his lands, before drawing. The time for making application was extended to the expiration of one year after the Surveyor-General should have returned to Council the draft, of which public notice was to be given.

After the time for drawing had expired, the remaining unsold lots, and the residue of the lands appropriated, not applied to be laid off, were to be advertised and sold within a reasonable time for the benefit of the State; and all certificates of depreciation received in payment, then receivable in the Land Office for lands sold by the Commonwealth agreeably to law.

As the western and northern boundaries of the State were not then run and marked, the Council was required to direct the lands remote from these boundaries to be first surveyed.

On the 3d day of May, 1785,[1] the Comptroller-General reported to the Council a list of persons entitled to Donation Lands (with the quantity of each), agreeably to the grants ordered to be made to the officers and soldiers of the Pennsylvania Line; and on the same day[2] the Council instructed the Surveyor-General to direct his deputies to survey the lands, first surveying those most remote from the northern and western boundaries of the State.

On the 5th May, 1785,[3] the Surveyor-General nominated and reported for approval the deputy surveyors of the Donation Lands under the Act of 24th March, 1785.[4] They were: Major William Alexander, Benjamin Lodge, Captain James Christie, Ephraim Douglass, Griffith Evans, James Dickinson, John Henderson, William Power, Jr., Peter Light, Andrew Henderson, James Dickinson, James Hoge, David Watt of Shearman's Valley, Alexander McDowell. The report was approved.

The Donation Lands were laid out into ten districts, running east and west. No. One began at the line of the Depreciation Lands; the others followed numerically to the northern boundary of the State. The deputy surveyors were, viz:—

William Alexander, for District No. One.

[1] 14 Col. Rec. 451–2.

[2] Ib. 452.

[3] Ib. 454.

[4] 2 Smith's L. 290.

John Henderson, for District No. Two.
Griffith Evans, for District No. Three.
Andrew Henderson, for District No. Four.
Benjamin Lodge, for District No. Five.
James Christy, for District No. Six.
William Power, for District No. Seven.
Alexander McDowell, for District No. Eight.
James Dickinson, for District No. Nine.
David Watts, for District No. Ten.

Griffith Evans was afterwards appointed Surveyor of District No. Nine, in room of James Dickinson, who suspended work on account of his fear of the Indians. (See his letter.)[1]

The commission to Griffith Evans, as surveyor of District No. Nine, contained the following clause: "Also of so much of the lands remaining yet unsurveyed on the waters of Beaver River as shall be sufficient to satisfy the quota of donation lots assigned to the aforesaid district." Date, May 8th, 1786. Under this clause he surveyed in Districts Nos. One and Two.

On the same day, May 5, 1785,[2] commissioners were appointed to run and mark the western boundary of the State from the Ohio River to the northwest corner of the State. (This matter will be referred to hereafter.) Owing to the uncertainty

[1] 10 Penna. Arch. 740.

[2] 14 Col. Rec. 454.

of the true line of the western boundary, much good land west of the Beaver River was left unsurveyed. After its location by the State Commissioners, Griffith Evans surveyed many tracts on this land in Districts Nos. One and Two, under the clause in his commission just recited. An agent duly qualified was required, to be appointed by the Council, to explore the country, noting the quality of the soil, the hills, mountains, and waters, creeks, marshes, upland, bottom-land, and such other matters as deserved notice, with the situation and distance, and particularly the land unfit for cultivation. The agent was required to make oath to perform his duties impartially, and was to receive one pound ten shillings for every day employed, not exceeding four months. His report was to be published. Sections 20, 21, 22, 23, Act 24th March, 1785.[1] The 24th section, Act of 24th March, 1785, had required the surveys to be made and returned on or before the 1st February, 1786; and required the agent to report failures of duty on part of any of the deputy surveyors. Whether any suspension of the surveys took place is not clear. But the Council must have been desirous of haste, as on the 20th of the preceding July[2] they wrote to David Rittenhouse and Andrew Porter, the Commissioners, urging the

[1] 2 Smith's L. 294.

[2] 14 Col. Rec. 507.

completion of the survey of the western boundary. This was necessary to carry forward the Donation surveys. It appears, however, by a letter of James Dickinson, surveyor of district No. Nine, dated at Pittsburgh, January 24, 1786,[1] that fear of the Indians prevailed, and a conference with the Indian chiefs Long Face and Long Hair led him, under the advice of John Wilkins and Jacob Springer, traders, to leave the survey for a time. Indeed, it was not until the 9th of January, 1789, that the title of the Indians to the lands bordering on Lake Erie and the Triangle was fully extinguished by an agreement of that date, made by Gen. Richard Butler and John Gibson, Commissioners of Pennsylvania, at Fort Harmar, with the chiefs, warriors, and others representing the *Ondwagos* or Senecas, Cayugas, Tuscaroras, Onondagos, and Oneidas, of the Six Nations.[2]

The surveys, however, were generally completed in 1786, though a few were made later.

The 7th section of the Act of 12th March, 1783,[3] had directed that all officers and privates entitled to land should make their applications, within two years after peace should be declared, and should any die, their heirs, executors, etc. should make application within one year thereafter. In the

[1] 10 Penna. Arch. 740. [2] 11 Ib. 529. [3] 2 Smith's L. 64.

event of neglect within the time limited it was then lawful for any person to apply to the Land Office to take up unlocated lands on such terms as the Legislature should thereafter direct. This period was extended by various laws from time to time.

Many of those entitled to lands having failed to appear or to apply, the Legislature, on the 6th of April, 1792,[1] passed an Act authorizing the land officers, on the 2d of July, 1792, to draw lots for every person entitled to Donation Land, who had not received the same, according to the list furnished by the Comptroller-General, in the same manner as if the persons entitled were present. Patents were to be issued within two years from the date of the Act. Any land not applied for within two years was ordered to be disposed of, agreeably to the regulations of the Act for the sale of the vacant lands within the Commonwealth.

The general Act for the sale of the vacant lands had been passed only three days before, on the 3d Apri , 1792.[2]

The limitation of two years was virtually repealed in the second section of the Act of 5th April, 1793,[3] and the land officers were required to draw lots for every person entitled who had not received his donation, and should apply therefor,

[1] 2 Smith's L. 296, in note. [2] 3 Ib. 70. [3] Ib. 110.

agreeably to the list submitted by the Comptroller-General to the Supreme Executive Council, and to issue patents agreeably to the 2d section of the Act of 6th April, 1792. The time for drawing under the second section was indefinite, none being fixed by the law.

On the 17th April, 1795,[1] another general Act was passed, directing the Comptroller-General to make lists of the names of those entitled to Donation Lands, whose names had not been included in his last report, together with their rank and quantity of land. Tickets were to be prepared for all persons entitled to Donation Lands, but not any more, and placed in the wheel, kept safely in custody, from which the land officers were to draw for those entitled, who had not before drawn lots. Report of the drawings was to be made to the Governor, who should cause patents to issue at the expense of the State. The legal representatives of deceased persons were entitled to all the advantages of the Act. All persons entitled were required to make application within one year; those beyond sea, or out of the United States, within two years; and officers and soldiers in the service of the United States within three years after the passage of the Act.

By the 6th section, after the expiration of these

[1] 3 Smith's L. 233.

periods, so much of the Donation Lands for which no application had been made might be disposed of in such manner as the Legislature should further direct. The time was further extended by Act of 20th March, 1797,[1] and again extended by Act of 11th April, 1799,[2] until September 1, 1799. Before any claim should be allowed it should be presented to the Comptroller-General, Register-General, and State Treasurer, who should inquire into its lawfulness, and, if allowed or rejected, the result certified to the Secretary of the Land Office. Notice was to be given of the time limited, and lots drawn after the 1st September in favor of all claimants receiving a certificate of allowance. On the 1st of May, 1800, the powers given were to cease, and no lots drawn afterwards. The residue of the Donation Lands was then to revert to the State, and be disposed of in such manner as should be directed by law in relation to other lands the property of the State.

The time, however, was further extended by Act of 23d February, 1801,[3] the second section of which required the Comptroller-General to furnish the Secretary of the Land Office with a list of names of all persons who had drawn lots, but not obtained patents for the same, with the numbers of the lots

[1] 2 Smith's L. 297. [2] 3 Ib. 383. [3] Ib. 467.

drawn, and the district in which they lay. It made it the duty of the Secretary, on application, to cause patents to be issued accordingly; the patents to be on parchment, and at the expense of the State; and any frauds or disputes to be decided by the Board of Property, as in other cases.

The first and third sections of this Act related to Donation Lots which had been surveyed beyond the Pennsylvania northern boundary and in the State of New York, as shown by the running and marking of the boundary line in the meantime. (This branch of the subject will be noticed hereafter.) Up to this time the subject of the Donation Lands had become complicated by the numerous Acts passed, and the limitations adopted, and extended from time to time, and many persons had not received their gratuities.

The Legislature, therefore, resolved to reopen the subject, and passed the Act of April 2, 1802,[1] entitled "An Act to complete the benevolent intention of the Legislature of this Commonwealth, by distributing the Donation Lands to all who are entitled thereto." The preamble recited that some of the soldiers of the Pennsylvania Line had not received Donation Lands; that some of the lots supposed to lie in New York were still in Pennsyl-

[1] 3 Smith's L. 505.

vania, and that other lots had not been numbered and returned, or were otherwise appropriated. The Act therefore required the land officers to ascertain these, cause them to be ticketed, and to be drawn in a prescribed manner, upon the application of those entitled, in the order of their applications: "Provided always that no lot to be drawn or patent to be issued in pursuance of this Act shall interfere with or defeat any prior title, which may have been acquired under the authority of any former law of this Commonwealth."

This proviso had an important bearing upon titles to undrawn Donation Lots acquired under the Act of 3d April, 1792, and 22d April, 1794; and especially upon titles acquired by settlement upon tracts lying within the eastern part of the Second District, known as the "Struck District" (which will be referred to).

The second section of the Act of 1802 required the Surveyor-General to ascertain the lots referred to with accuracy by actual survey, have returns made, and divide large into smaller lots, so as to supply the number required to carry the design of the Act into complete effect. Under this Act the Board of Property was to exercise the same powers relating to Donation Lands as in cases of other lands, and to decide cases of difficulty and dispute. Provision was made for the widows and heirs of de-

ceased soldiers. Applications for lands and patents were limited to one year after the passage of the Act. The Act of 1802 was continued until the 1st April, 1805, by the Acts of 1st April, 1803, and 29th March, 1804.

By the Act of 25th March, 1805,[1] persons holding donation lands within the "Struck District" and the Erie Triangle were authorized, upon releasing their patents, to have other unappropriated lots of equal quantity to be patented to them free of expense. The second section provided that this law and the Act of 2d April, 1802 (excepting the limitation clause in that Act), should continue in force until April 1, 1806. The first section of the Act of 1805 was continued in force until the 1st of April, 1810. This Act ended the general legislation conferring donations, and since April 1, 1810, the Land Office has been closed against further applications.

Lastly came the Act of 26th March, 1813, which opened all Donation Lands which should remain undrawn on the 1st of October, 1813, to improvement and actual settlement, and confirmed titles by actual settlement theretofore made. The terms of this Act differed from those of 3d April, 1792. The settler must have resided thereon with his family for three successive years immediately pre-

[1] 4 Smith's L. 223.

ceding the passage of the Act, and cleared, and fenced, and cultivated at least ten acres thereof. Any person who should, after the 1st October then next, make an improvement and actual settlement on any undrawn tract, by erecting thereon a dwelling-house fit for the habitation of man, and reside thereon with a family for three years from the date of his settlement, and clear, fence, and cultivate at least ten acres thereof, and make proof of the completion of his settlement and residence, by two witnesses, before a judge or justice of the same county, and pay to the State one dollar and fifty cents per acre, with interest from three years after his settlement, should be entitled to a patent. But the patent should not issue until the applicant produced a certificate of the deputy surveyor of the proper county, certifying to the number of the tract, the number of acres, and a survey by him according to the original boundaries. The first settlement made and continued was to give inception of title.

Notwithstanding the closing of the office against applications of the soldiers after the 1st of April, 1810, this law seems inferentially to have recognized a continuance of them until October 1, 1813. Probably this mea t to embrace the applications of widows and heirs.

In order to facilitate actual settlements under the

Act of 1813, the 3d section provided for a list of all undrawn lots in the several districts, and a publication thereof at the seat of government, and at Pittsburgh, Mercer, Meadville, and Beaver.

In August, 1785, Genl. Wm. Irvine, the agent appointed by the State to explore and examine the Donation Lands, reported to the Supreme Executive Council those parts of the lands he considered unfit as gratuities to the soldiers of the Pennsylvania Line. Among these, he found the land north of the line of the Depreciation Lands, and eastward from the path from Fort Pitt to Venango, at the mouth of French Creek, beginning about forty miles above Fort Pitt, pretty good for about five or six miles; thence to the Allegheny River, about twenty-five miles due east, no land was fit for cultivation.

In consequence of this report, the Council left out of the wheels the lots within the easternmost part of the Second District. This part has since been known as the "Struck District," and was generally understood at the time to be subject to actual settlement under the Act of 3d April, 1792. It was therefore entered upon and settled by persons who had made large and valuable improvements. Indeed, it was afterwards held by the Supreme Court that these titles were valid,[1] in

[1] 6 S. & R. 155.

the case of Varnum *v.* Kennedy. The decision was admitted by Judge Duncan, who delivered the opinion, to be a doubtful matter. Still, it was wise and just, and prevented, probably, contests between the settlers and the soldiers. The Act of 25th March, 1805,[1] however, ended all difficulty, by ordering all tickets for lots in the "Struck District" to be withdrawn from the wheels; and by authorizing soldiers to return their patents for lots in this District and take lots elsewhere. The confusion leading to the Act of 1805 arose out of the interpretation given by the Land Officers to the Act of 2d April, 1802, which directed all the undrawn lots, not otherwise appropriated, and drawn lots not applied for, to be put into the wheels. It was supposed this included the lots in the "Struck District," and therefore the tickets, which had been withdrawn by order of the Council, were returned to the wheels. The Act of 1805 required these to be again withdrawn, and the lots opened to settlement. The settlements were ratified generally by the Act of 1813.

At the time when the Tenth Donation District was surveyed into lots, the northern boundary between Pennsylvania and New York had not been definitely surveyed and marked, and the Triangle at Erie had not been purchased. In conse-

[1] 4 Smith, 223, 4.

quence of this uncertainty, some of the lots in that District were surveyed within the State of New York, and within the Triangle. This led to Acts to correct the errors and confer title to other lands, upon those whose lots fell therein.

The Act of 30th September, 1791,[1] reciting that after the running of the northern boundary, it appeared that some of the Donation Lots had been laid off in New York, directed the Surveyor-General to report to the Governor the patents granted for such lots, number of acres, and names of grantees, and requested the Governor to give public notice to all persons concerned to apply before December 1, 1791, on which day the Surveyor-General should ascertain the lots to be chosen (in a prescribed manner), in lieu of those lost, and of like quantity in the Donation Districts already surveyed, and not disposed of. New patents were to be issued, provided the applicant returned his former patent, and released the Commonwealth from any loss sustained.

The Act of 10th April, 1792,[2] extended the period of application until July 1, 1792. This was followed by the Act of 5th April, 1793,[3] which repeated the directions of the Act of 30th September, 1791.

[1] 2 Smith's L. 295, in note. [2] Ib. [3] 3 Ib. 110.

The Act of 11th April, 1799,[1] extending until September 1, 1799, the period for applying for Donation Lands, and regulating the mode of authenticating claims, would seem to embrace the applications for lands in lieu of those surveyed in New York.

By the Act of 23d February, 1801,[2] the Legislature again intervened for those whose lots had fallen in New York. The time of application was extended three years; the Board of Property was required to investigate suspected fraud, and disputes between applicants, and to call on the attorney, if any, to make oath that he had no interest in the claim. The Board was to proceed in the manner directed in the 13th section of the Act of 24th March, 1785.[3]

The Act of 2d April, 1802,[4] already referred to, applies only to those lots which were supposed to have fallen within New York, but which were found to be in the Erie Triangle. The Act of 25th March, 1805,[5] in the 1st section coupled those whose lots were within the Triangle with those whose lots were within the "Struck District," and authorized them, on surrendering their patents, to receive therefor an equal quantity of unappropriated land, and obtain patents therefor. Section

[1] 3 Smith's L. 383, and 2 Ib. 297–8.
[2] 3 Ib. 467.
[3] 2 Ib. 292.
[4] 3 Ib. 505.
[5] 4 Ib. 224.

2d continued the Act in force until April 1, 1806. As to those lots within the Erie Triangle which had been drawn and patented, it was held by the Supreme Court that the purchase from the United States accrued to the benefit of the owners of these lots, who still retained them, on the principle in equity, that an after-accrued title is held in trust by a vendor for his vendee. No legislation was necessary to confirm their titles. (McCall *v.* Coover.[1])

In regard to taxation of Donation Lands, the following decisions have been made: In Coney *v.* Owen,[2] in which the subject was discussed by Gibson, C. J., on one side, and Kennedy, J., on the other, it was held that exemption from taxation under the Acts of 1st March, 1780, and 16th March, 1785, is the personal privilege of the soldier, and that under the words of the tax law of 1804 general jurisdiction was conferred upon the county authorities to assess all unseated lands. The privilege, therefore, must be shown. As a consequence, a sale of such lands for taxes is good where the exemption is not shown; and when shown, though the sale is void, the purchaser at the tax sale is entitled to the value of his improvements. The exemption under these Acts is limited to the life of the grantee and his ownership of the

[1] 4 W. & S. 151. [2] 10 Harris, 256.

lot. Death or alienation subjects the lot to taxation. The case of McCall *v.* Coover also decided this. The doctrine of Coney *v.* Owen was not looked upon as just, though the decision was acquiesced in. (Steele *v.* Spruance.[1]) In Jennings *v.* McDowell[2] it was held that without proof of death, after a great lapse of time and no acts of ownership, the death of the donee may be presumed, and a tax title held valid against an intruder, or one showing no title whatever. As to location by the numbered corner and boundaries, see the following cases: Smith *v.* Moore, 5 Rawle; Dunn *v.* Ralyea, 6 W. & S.; Maris *v.* Hanna, 4 W. & S.; Hunt *v.* McFarland, 2 Wright.

[1] 10 Harris, 256. [2] 1 Casey, 388.

CHAPTER V.

THE WESTERN AND NORTHERN BOUNDARIES OF THE STATE, AND PART OF THE SOUTHERN.

The boundaries of Pennsylvania on the west and north are so intimately connected with the Depreciation and Donation Lands, and the subsequent titles, that a short account of them is in place here.

On the 23d of April, 1781,[1] the Supreme Executive Council issued instructions to John Lukins and Archibald McClean, Esquires, to run and mark the State line between Pennsylvania and Virginia, according to the following agreement, made at Baltimore, August 31st, 1779:—

"We, George Bryan, John Ewing, and David Rittenhouse, Commissioners from the State of Pennsylvania; and we, James Madison and Robert Andrews, Commissioners for the State of Virginia, do hereby mutually, on behalf of our respective States, certify and confirm the following agreement, viz: To extend Mason and Dixon's line, due west five degrees of longitude, to be computed

[1] 12 Col. Rec. 704.

from the River Delaware for the southern boundary of Pennsylvania, and that a meridian drawn from the western extremity thereof to the northern limit of said State be the western boundary of Pennsylvania forever."

Lukins and McClean, as Commissioners, were informed that it was expected they would be met by Commissioners on part of Virginia, but if not, they were instructed that the line should be ascertained and marked, in as strict conformity as possible to the above agreement, which had been ratified by the Legislature of each State. The resolution of ratification of Pennsylvania was passed on the 23d September, 1780.[1] The resolution of ratification by Virginia was, however, not satisfactory to the Pennsylvania authorities, and an Act was passed, April 1, 1784,[2] to prevent any countenance it might give to unwarrantable claims of title under Virginia. With these resolutions the agreement was again confirmed. The purpose was to save lawful rights, prevent unlawful intrusions, and preserve harmony between the States.

In the meantime a temporary line had been run in the autumn of 1782—by Alexander McClean on the part of Pennsylvania, and Joseph Neville on the part of Virginia—to prevent collision between the inhabitants of the two States. The authorities

[1] 2 Smith's L. 261. [2] Ib. 261.

of Virginia had made claim to a large part of Western Pennsylvania, embracing it in the district of West Augusta, and had erected the counties of Monongalia, Ohio, and Youghagania, each interfering with Pennsylvania territory. Courts, magistrates, and officers had been established within this district; and officers of Pennsylvania had been arrested and imprisoned. The war spirit rose to a high pitch, and had nearly suffused the disputed soil with blood. Many Virginia surveys therein were made, and titles granted by Virginia. Added to the alarming condition of affairs between the people of the two States, Virginia had been invaded by the British; rendering the running and marking of a permanent boundary impossible for a time. A large correspondence took place between the President of the Supreme Executive Council of Pennsylvania and the Governor of Virginia, which will be found in the ninth and tenth volumes of the Pennsylvania Archives. A most full and interesting account of those times will also be found in the History of Washington County, edited by Boyd Crumrine, Esq., and published in 1882.

The temporary line referred to was confirmed by the Assembly on the 22d of March, 1783,[1] and a proclamation issued by John Dickinson, President

[1] 10 Penna. Arch. 8.

of the Council, on the 20th of March, 1783,[1] giving notice and commanding obedience to this establishment of boundary. On the 26th March, 1784,[2] instructions were issued to Dr. John Ewing, David Rittenhouse, John Lukins, and Thomas Hutchins, who had been appointed Commissioners on part of Pennsylvania, to run and finally determine the boundary line between this State and Virginia. The report of the Pennsylvania Commissioners was made at Philadelphia, December 23d, 1784,[3] inclosing the joint report of the Commissioners of both States, dated November 18th, 1784. They ran the boundary and defined and marked the southwest corner of Pennsylvania, from which the western boundary was to be run northward, to the northwest corner of the State, and fixed upon the 16th of May, 1785, to complete the work on the western boundary.

April 9, 1785,[4] instructions were issued to Dr. John Ewing and Mr. Hutchins to run and mark the western boundary. Dr. Ewing, being unable to accept, resigned, April 18, 1785,[5] and Mr. Hutchins being absent, David Rittenhouse and Andrew Porter took their places.[6] They, with the Virginia Commissioners, Andrew Ellicott and Joseph Neville, reported on the 23d of August,

[1] 13 Col. Rec. 541–2. [2] 10 Penna. Arch. 230.
[3] Ib. 373–7. [4] Ib. 438. [5] Ib. 443. [6] Ib. 444.

1785,[1] that they had carried the meridian line from the southwest corner of Pennsylvania northward to the river Ohio, and marked it by cutting a vista over all the principal hills, felling and deadening trees through the lower grounds, and placing stones, marked on the east side P. and the west side V., accurately on the meridian. Here the duty of the Virginia Commissioners ended.

Under a resolution of May 5, 1785,[2] David Rittenhouse, Andrew Porter, and Andrew Ellicott were appointed Commissioners to continue the western boundary north of the Ohio to the northwest boundary of the State.

These Commissioners began their survey from the Ohio northward on the 23d of August, 1785. Fort McIntosh was then occupied by the Pennsylvania troops, under Lieutenant-Colonel Josiah Harmar, commandant. On the 29th Messrs. Porter and Ellicott visited the fort, going up by water, and in a few days Dr. McDowell and Major Finney, from the fort, returned the visit. This was followed by a visit to the Commissioners on the 11th September, by Colonel Harmar and Major Doughty.

After carrying the line forward between forty and fifty miles the Commissioners suspended the work until the following year. The survey of the

[1] 10 Penna. Arch. 506.

[2] 14 Col. Rec. 454.

remainder of the line to Lake Erie was made in 1786[1] by General Porter and Alexander McClean. By a letter dated at "Shenangœ" Creek, 25th June, 1786,[2] they informed the Council that they began the extension on the 19th of June. On the 23d September they reached a point 143 miles from the southwest corner of the State, and on the waters falling into Lake Erie. On Friday, September 15, 1786, they came to Lake Erie, a distance of 155 miles 226 perches from the southwest corner of the State. The angle formed with the northern boundary fell a short distance within the waters of the lake. At this time the Erie Triangle had not been purchased of the Indians and the United States, and the northern boundary was a straight line, intersecting the western as stated, leaving Pennsylvania without a harbor. An interesting account of the running of this western boundary will be found in the Journal of General Andrew Porter, published in the fourth volume of the Pennsylvania Magazine of History and Biography.

THE NORTHERN BOUNDARY.

In determining its operation on the lands within the last purchase of the Indians in 1784 and 1785, it will be unnecessary to trace the northern boundary, except from the Allegheny River westward. A map of this part of the line is found at the end

[1] 11 Penna. Arch. 26. [2] Ib.

of the eleventh volume of Pennsylvania Archives. The distance is about nine miles from the Allegheny to Connewango Creek, adopted as the eastern boundary by the Act of 3d April, 1792, opening the lands westward to settlement and survey. This line ends in Lake Erie, a short distance from the shore end of the western boundary. Under a resolution of the Assembly of September 15, 1783,[1] it was made the duty of the Commissioners to examine and ascertain where the northern boundary would fall, and whether any part of Lake Erie was within the State.

The Commissioners made two reports, the first, October 12, 1786,[2] stating the running and marking of the line to the 90th milestone from the Delaware, on the western side of the South Branch of the Tioga River. This report was signed by Andrew Ellicott for Pennsylvania, and James Clinton and Simeon De Witt for New York. The second was made October 29, 1787,[3] by Andrew Ellicott and Andrew Porter for Pennsylvania, and Abraham Hardenberg and William Morris for New York. It states the running and marking of the line in the 42d parallel of north latitude, beginning at the Delaware River, and extending to a meridian drawn from the southwest corner of Pennsylvania, and that they had extended the line

[1] 10 Penn. Arch. 129. [2] 11 Ib. 522. [3] Ib. 526.

from the 90th milestone to Lake Erie, and marked the same permanently with milestones, or posts surrounded with earth where stone was not found, well marked, with variations of the magnetic needle, and the distances; and on the south side, "Pennsylvania, latitude 42° N., 1787;" and on the north side, "New York." This report was received November 29, 1787.

By an Act of Assembly of Pennsylvania, of the 29th of September, 1789,[1] the boundary as thus run was confirmed provisionally that the same should be ratified by New York. This Act is valuable in the features that its preamble recites a full history of the proceedings relative to this boundary, and states particulars as to the execution of the commission. It provided also for the perpetuation of the evidence by means of copper-plate maps, of which two hundred were to be printed *in perpetuam memoriam.* The line began at a stone monument upon a small island in the Mohawk branch of the Delaware, set upon the beginning of the 43d degree of north latitude, and ran to Lake Erie, a distance of 259 miles and 88 perches. This line remained unchanged until so much of it as bounded the Erie Triangle was superseded by the purchase of that territory, to be presently stated.

[1] 2 Smith's L. 510.

CHAPTER VI.

THE ERIE TRIANGLE.

The running and marking of the northern boundary did not complete the present area of the State of Pennsylvania. But the location of the line brought out clearly the fact that she had no harbor or even convenient access to Lake Erie. This led her authorities to think of purchasing from the United States territory bordering on the lake and the northern boundary, which would furnish access and a secure harbor at Presque Isle. Measures were taken through the Pennsylvania members in Congress to acquire the territory lying between the western boundary of New York and Lake Erie, triangular in shape, and embracing the harbor at Erie.

A report was made by a committee appointed for the purpose of inquiry, read in the Assembly on the 9th of November, 1787.[1] Thereupon, November 12th, it was resolved to call upon the Supreme Executive Council to lay before the Assembly a

[1] 11 Penna. Arch. 211.

description of the lands lying between the northern boundary of the State and Lake Erie, and an estimate of the sum necessary to purchase the same. On the 5th of February, 1788,[1] Vice-President Muhlenberg, on behalf of the Council, wrote to the members of Congress from Pennsylvania, inclosing the resolution, and requesting information upon the subject. His letter was answered February 28, 1788.[2] General William Irvine, one of the members, on the 23d,[3] introduced a resolution into the House, reciting the running of the northern boundary of Pennsylvania, and that the northwest corner extended into Lake Erie, cutting off a narrow strip of land from the territory of the United States; that by the cessions of New York and Massachusetts a line was to be drawn by which the said States were to be bounded on the west; and it was important to peace and harmony that this boundary line be run, and therefore directing the Geographer of the United States, in conjunction with the agents of these States, to run and ascertain their western limits.

A committee, consisting of Messrs. Clark, Irvine, Armstrong, Wadsworth, and Brown,[4] to whom General Irvine's resolution was referred, reported upon it favorably, submitting a resolu-

[1] 11 Penna. Arch. 237.
[2] Ib. 251.
[3] Ib. 247.
[4] Ib. 248.

tion to carry the purpose of the report into effect. This report was adopted June 6, 1788,[1] and directions given to make the survey, and cause a return to be made to the Board of the Treasury, who were authorized to sell the tract in whole, at a private sale, for a price not less than three-fourths of a dollar per acre, in specie, or public securities bearing interest. Extracts from the deeds of cession to the United States by Massachusetts and New York will be found in the Pennsylvania Archives.[2]

The Supreme Executive Council, on the 14th day of June, 1788,[3] authorized the President to inform our delegates in Congress that they were empowered to contract with Congress on behalf of the State for the purchase of these lands, at the rate of three-quarters of a dollar per acre, payable in specie, or in public securities bearing interest.

William Bingham and James R. Reid, two of the delegates, made the proposal for the purchase on the stated terms, on July 7, 1788,[4] which was accepted by Samuel Osgood and Arthur Lee on behalf of the Board of the Treasury, August 28, 1788.[5]

In pursuance of this contract, Congress by an

[1] 11 Penna. Arch. 308. [2] Ib. 309–10.
[3] Ib. 313. [4] Ib. 382–83. [5] Ib. 382.

Act of cession and transfer, of the 4th of September, 1788,[1] completed the sale. The purchase was reported to the Assembly September 9th, 1788, with an estimate of nine hundred and fifty pounds as necessary to carry out the negotiations.[2]

On the 13th September, 1788,[3] the Assembly confirmed the purchase and provided means for payment, describing the land as "a triangular piece or tract of country, situate, lying, and being on Lake Erie, bounded on the east by a meridian line, part of the western boundary of the State of New York; on the south by part of the northern boundary of the State of Pennsylvania, being a continuation of the line between this State and that of New York, from the western boundary of the said State till it intersects the said lake, including Presque Isle, and running northeasterly, or as the margin of said lake runs, according to the several courses thereof (with all benefit, property and advantages of the coast, bays, and inlets, on or near that part of the margin of said lake, which is the boundary of the country described, or intended so to be), till it meets the same meridian line before mentioned."

This completed the area of the State as it exists now, leaving the Indian title only to be extinguished.

[1] 11 Penna. Arch. 387–8. [2] Ib. 389–90. [3] Ib. 395–6.

PURCHASE OF THE INDIANS.

On the 9th of September, 1788,[1] Vice-President P. Muhlenberg, on behalf of the Supreme Executive Council of Pennsylvania, informed the Speaker of the General Assembly that accounts had been received from Pittsburgh of a pacific disposition of the Indians, and stating that a large meeting of the northern and western tribes was expected at Muskingum, to hold a treaty with the Continental Commissioners, and that the opportunity was favorable to purchase the title of the Indians to the territory in the Erie Triangle. A commission to treat with them was therefore recommended.

On the 10th[2] a committee of the Assembly, consisting of Messrs. Peters, Lowry, Rittenhouse, Finlay, and Irvine, conferred with the Council on the subject of the purchase. Action on the report of this committee was taken in the Assembly on the 13th,[3] and the Supreme Executive Council was empowered to take the necessary steps for purchasing of the Indians having just claims, and to appoint two commissioners to negotiate with them. An appropriation not exceeding nine hundred and

[1] 15 Col. Rec. 531.

[2] Ib. 532.

[3] 11 Penna. Arch. 396.

fifty pounds was made for this purpose, agreeably to an estimate of the Council.[1]

In pursuance of these proceedings a commission was issued to General Richard Butler and General John Gibson, dated at Philadelphia, October 2, 1788,[2] accompanied by the resolution of the Assembly of the 13th September, the resolution of Congress relative to the Triangle, and a rough map of it drawn by Mr. Ellicott.

The Commissioners met the Indians at Fort Harmar, at the mouth of the Muskingum River, and on the 9th of January, 1789, effected a treaty with them for the purchase of their title. The treaty, entitled "Agreement between the Six Nations and Commissioners for Lands on Lake Erie," etc., is dated January 9, 1789,[3] and names the tribes as "Ondwagas or Senecas, Cayugas, Tuscaroras, Onondagos, and Oneydas." This agreement provided fully for the cession of the Indian title and the rights of the State, reserving only to the Indians residing on the Connewango Creek, and other places within the Triangle, the right of hunting and fishing peaceably.

This treaty is referred to by Cornplanter (Captain Abeal), in an extended address before the

[1] 11 Penna. Arch. 390.

[2] 15 Col. Rec. 554.

[3] 11 Penna. Arch. 529–33.

Supreme Executive Council, at Philadelphia, on the 29th of October, 1790.[1] (See Appendix.)

Thus was the last remnant of Indian title to the soil of Pennsylvania extinguished, according to the uniform, humane, and just policy of the Proprietaries and the State.

[1] 16 Col. Rec. 501 to 507.

CHAPTER VII.

THE RESERVATIONS.

The subject to be noticed next, in natural order, is the reservations by the State out of the lands north and west of the Ohio, Allegheny, and Connewango. These were reserved expressly "*to the use of the State.*" The purpose was to prevent title being acquired by her citizens under the general laws relating to lands. A prime motive also was to enable her to dispose of the lands therein by special mode, in the manner best suited to her wishes and her interests. This mode will be referred to hereafter.

The two most important reservations are those found in the original Act of 12th March, 1783,[1] in these words: "Reserving *to the use of the State* three thousand acres in an oblong of not less than one mile in depth from the Allegheny and Ohio rivers, and extending up and down the said rivers from opposite Fort Pitt so far as may be necessary to include the same; and the further quantity of

[1] 2 Smith's L. 63.

three thousand acres on the Ohio, on both sides of the mouth of Beaver Creek, including Fort McIntosh."

Other reservations were made, under subsequent laws, at Erie, Franklin, Waterford, and Warren. The first suggestion as to these seems to have come from Andrew Ellicott, in a letter dated at Baltimore, February 19, 1788.[1] He was one of the Commissioners to run and mark the northern boundary of the State, and had noticed the general features of the country during his work. He stated in his letter that the situation of several places demanded the attention of the Legislature; and mentioned the mouth of the Connewango (Warren); the mouth of French Creek, where Fort Venango stood (Franklin); and the head of the navigable water of French Creek, at Fort Le Bœuf (Waterford). The purchase of the Erie Triangle was not then completed, and for this reason probably Erie was not mentioned.

On the 12th of November, 1788,[2] the Supreme Executive Council, by message, recommended the subject to the attention of the Legislature, and specified Presque Isle (formed by Lake Erie), Le Bœuf, and Connewango to be reserved to the use of the Commonwealth. A committee was ap-

[1] 11 Penna. Arch. 243; Ib. 203. [2] 15 Col. Rec. 593.

pointed, who reported; and on the 24th of March, 1789,[1] the Assembly authorized the Council to have surveyed, for *the use of the Commonwealth*, of lands at Presque Isle (Erie), Le Bœuf, at the mouth of the Connewango, and at Fort Venango, not exceeding three thousand acres at each place.

In pursuance of this authority, the Council, on the 4th April, 1789,[2] directed the Surveyor-General to appoint a proper person to locate, survey, and return the several tracts mentioned. The Surveyor-General appointed to this service John Adlum, who, on the 14th of April, applied for money to make the survey. A committee of the Council reported[3] they could find no money which with propriety could be advanced. On the 28th of April the Council refused the application, because of there being no appropriation for this purpose.[4] Presumably the funds were afterwards supplied, as a report of the surveys of the four reservations was made by Mr. Adlum to the Supreme Executive Council, which, on the 16th of September, 1789, was transmitted to the Assembly.[5]

There is a private reservation, originating in the suggestion of General Richard Butler, which requires special notice.[6] In a letter of 23d March,

[1] 11 Penna. Arch. 566.
[2] 16 Col. Rec. 47.
[3] 11 Penna. Arch. 577.
[4] Ib. 577; 16 Col. Rec. 66.
[5] 16 Col. Rec. 161.
[6] 11 Penna. Arch. 562.

1789, addressed to the President and Council, he stated that Captain Abeal (the Cornplanter), one of the principal chiefs of the Seneca Tribe of the Six Nations, had been very useful in all the treaties since that of 1784, inclusive, and his attachment to the State was very great. The General therefore suggested it would be good policy to fix his attachment, and also because of his ideas of civilization, to grant to him a small tract of land within the last purchase. He suggested 1000 or 1500 acres. This letter was sent to the Assembly on the 24th of March, 1789, who on that day ordered the Council to set apart and survey 1500 acres in the Triangle for the use of the Seneca Chief, Captain Abeal, or the Cornplanter, to him and his heirs forever, in consideration of his personal merit and attachment to the State.[1]

The Cornplanter visited Philadelphia and had interviews with the Council in October, 1790. His speech to the Council on that occasion will be found in the Appendix; it is worthy of perusal, exhibiting mental acuteness and accuracy of statement. He also refers with feeling to the wrongs done to the Indians even when known friends of the whites. Cornplanter never swerved in his friendship to

[1] 11 Penna. Arch. 566; 16 Col. Rec. 501 to 506.

the "Quaker State." The Executive Council he termed "Fathers of the Quaker State."

Among the great men of the Indian tribes none shone more resplendently in every virtue than Gy-ant-wa-chia, the Cornplanter, commonly called Captain John Abeal, or O'Bail. Pontiac, Brandt, and Red Jacket possessed high qualities, but theirs were individual and single. Cornplanter combined all of theirs and more. He was statesman, warrior, and orator; wise, brave, and eloquent. He loved peace, truth, honesty, sobriety, humanity, and justice, and in his latter years adopted Christian principles, and some of the ways of civilization. His love of the whites led to suspicions among the Red Men of his fidelity; but his long life—more than one hundred years—and his consistency of conduct dispelled all thought of this, and marked his wisdom in shielding his people from the inevitable fate which seemed to await them, by cultivating the good-will of Washington and of the Quakers of Pennsylvania.

A monument was erected to his memory in Warren County, Pennsylvania, under the legislation of the State. It was very carefully superintended by the Honorable Samuel P. Johnston, of Warren, who took great interest in the work; and a very appropriate and able address upon the life, services, and character of Cornplanter was de-

livered by the late Honorable James Ross Snowden in 1867.

There was a private reservation, called "General Irvine's," referred to in the Act of 31st March, 1812, which I have not been able to trace.[1] Possibly it is the same referred to in 13 Colonial Records, 776. Yet this seems to be too early in date. More probably the reservation lay at the mouth of the Brokentraw, where General Irvine is known to have had valuable land.

[1] 5 Smith's L. 380.

CHAPTER VIII.

THE ALLEGHENY AND BEAVER RESERVATIONS.

The Allegheny reservation contained in the Act of 12th March, 1783,[1] is in these words—viz: "*Reserving to the use of the State* three thousand acres, in an oblong of not less than one mile in depth from the Allegheny and Ohio rivers, and extending up and down the said rivers, from opposite Fort Pitt, so far as may be necessary to include the same." I have italicized the leading words to characterize the intention of the Legislature.

This reservation was surveyed by Alexander McClean, in the month of April, 1785, in pursuance of an order to make the survey before the other lands were surveyed. The northern boundary began on the right bank of the Ohio River, nearly opposite to the mouth of Chartiers Creek, and ran east nine hundred and seventy-two perches to a hickory tree, north eighty perches to a sassafras, east two hundred and twenty-nine and a half perches to a mulberry, north twenty-six

[1] 2 Smith's L. 63.

perches to a post and stones on the bank of Girty's Run, thence down Girty's Run several courses—in all one hundred and three perches—to the Allegheny River. The two rivers constituted the remaining boundaries.

To the present generation the description of the Allegheny reservation given by David Redick, Esq., will be amusing. He was then a man of mark in Western Pennsylvania; at one time Vice-President of the Supreme Executive Council,[1] then a delegate to the Constitutional Convention of 1789–90, and after the organization of Beaver County, in the year 1803, one of its Associate Judges until his death in 1830.

In his letter to President Franklin of 19th February, 1788,[2] he wrote in derisive terms of this reservation. Among other things he said: "I am of opinion that if the inhabitants of the moon are capable of receiving the same advantages from the earth which we do from their world—I say, if it be so—this same famed tract of land would afford a variety of beautiful lunar spots not unworthy the eye of the philosopher."

But time has shown the fallacy of his views.

The policy of the State in all these reservations was to reserve them to herself, so that by special legislation, comprehending regulations, *minor re-*

[1] 11 Penna. Arch. 410–11, and 15 Col. Rec. 584.

[2] 11 Penna. Arch. 224; also Appendix.

servations, and wise provisions, they could be disposed of to suit the views of the Legislature.

Pursuing that design, the first Act passed was that of September 11, 1787.[1] It recited that "a sale of the said tract of land, if laid out and disposed of to the best advantage, will furnish a considerable sum of money towards discharging the debt due by the State. Therefore, to attain this end in the most serviceable manner to the State," it enacted, "That the President or Vice-President in Council are hereby empowered to cause to be laid out and surveyed a town, in lots, with a competent and suitable number of out-lots for the accommodation thereof, in the said tract; and to cause to be laid out and surveyed the residue of the tract in lots, which last-mentioned lots shall not be less than one acre nor more than ten acres each."

Upon the return of such surveys they were empowered to sell the whole of the said lots to the most advantage to the State, and to convey the same.

Then followed the important minor reservations required to preserve control, and to carry out the legislative design, viz:—

"That the President or Vice-President in

[1] 2 Smith's L. 414.

Council *shall reserve* out of the lots of the said town, *for the use of the State*, so much land as *they* shall deem necessary for a court-house, gaol, and market-house, for places of *public worship*, and *burying the dead;* and without the said town one hundred acres for a common of pasture; and the streets, lanes, and alleys of the said town and outlots *shall be common highways forever.*"

I have italicized the leading features to indicate the intent of the Legislature; and show the clear distinction between *reservations* and *dedications.* The places deemed necessary for public uses were detailed as reservations; while the streets, lanes, and alleys necessary as highways were *dedicated* at once to the public.

A noticeable feature, indicating the views of that time, was the inclusion of *houses of public worship* and *burial places*, as *public* uses. However singular this may appear to men of this generation having looser notions, at that early day this reservation accorded decidedly with their stricter notions of religious practice, under a Constitution which then required the members of Assembly to be sworn to a belief in God and in the divine inspiration of the Scriptures,[1] and which declared that all religious societies or bodies of men united or incorporated for the ad-

[1] Conventions of Pennsylvania, p. 58.

vancement of religion and learning, or other pious or charitable purpose, should be encouraged.[1]

In that day, and long anterior, churches were deemed objects of sacredness, and a great *public* blessing in their influence upon society, while burial was considered a paramount Christian duty. This spirit of the times is to be seen in the numerous laws for the protection of religion, religious societies, and their places of worship. Among these laws may be noticed the Act of 6th May, 1731,[2] and the Act of 4th April, 1793,[3] which evince the care and solicitude of the State for the preservation and protection of churches.

The records of some of these churches were the only depositories of births, marriages, and deaths. Those of Christ Church in Philadelphia were of so much importance that the Historical Society of Pennsylvania has deemed them worthy of publication in long lists, continuing through numbers of its quarterly. The Act of 1700 made such registries legal evidence.[4] Judicial decisions have also recognized the value and importance of religious societies and churches, and even held that the Christian religion is a part of the common law of the State.[5] The Legislature, also, in three Acts, recognized churches and burial grounds as among

[1] Conventions of Penna. p. 64.
[2] 1 Smith's L. 192.
[3] Ib. 323, 4.
[4] Ib. 20.
[5] 11 S. & R. 394.

public uses in the case of the Beaver reservation (*q. v.*).

It is manifest, therefore, that places of public worship were deemed so vital to public morals and essential to the welfare of the people, they were a "*public use*" worthy of a place in the legislation relative to these reservations.

In the following year (1788), by the Act of 24th September,[1] the county of Allegheny was erected out of parts of Westmoreland and Washington counties. The 8th section directed the Trustees of the county to choose lots in the reserved tract opposite Pittsburgh for a court-house and prison. But the region beyond the Allegheny River, being then uninhabited and subject to Indian incursions, the Act of 13th April, 1791, repealed this provision, and authorized the Trustees to erect these buildings in Pittsburgh.[2]

In making the survey of the town under the Act of 1787, the plat was laid out a square, the sides coinciding nearly with the cardinal points of the compass, and a common of pasture laid around it, leaving the largest part lying to the north of it, and the smallest to the south. Hence the different parts have been called North, East, South, and West common. This common is now the public park of Allegheny City.

[1] 2 Smith's L. 448. [2] 3 Ib. 36.

Four centre squares in the town plat were reserved for the public uses specified in the Act.

The next law of importance relative to this reserve tract was the Act of 3d March, 1818,[1] directing the Western Penitentiary to be erected on the public land adjoining the town of Allegheny, and requiring the Councils of Pittsburgh to appoint a Commission of five persons to select a suitable site, to contain not less than ten acres "of the public land." The site was selected on the west common, and the Penitentiary built, and from time to time enlarged, until lately removed to the right bank of the Ohio.

The owners of lots entitled to common of pasture made no objection to the selection and erection. The State held the title to the land on which the common was laid out, subject only to the use for pasture. On this ground the grant for the erection of the Penitentiary was sustained, as stated by Chief Justice Tilghman in the case of The Western University *v.* Robinson *et al.*[2] It was the understanding of the lot-owners (he said) that the advantage of the erection of the Penitentiary on the common ground was for their interest, without further compensation, and having acquiesced their rights were released.

The University stood, however, in a different

[1] 7 Smith's L. 62.

[2] 12 Sergt. & Rawle, 29.

attitude, and there being no evidence of acquiescence by the lot-owners, the grant to the University of forty acres laid off upon this common would not be supported adversely to the right of pasture. The grant to the University was under the Act of February 18, 1819.[1]

This case settled an important principle applicable to both of these reservations under the Act of 12th March, 1783, that the title to the land in the *minor reservations* in the town lands remains in the State. This principle was applied with force in several cases.

Carr *v.* Wallace[2] recognized the right of the Commonwealth to dispose of the land itself, subject only to the commonage of the lot-owners, which could be relinquished by consent. In that case Carr was estopped in equity by reason of his supineness, and permitting the Theological Seminary to expend money in building and improving, without notice of his dissent, under the Act of April 17, 1827.[3] It was further held in this case that the right of common was appurtenant to the in-lots, and not to the out-lots, and that the right was divisible by alienation of a part of a lot.

This ownership of the State in the land reserved was recognized in other cases to be referred to presently.

[1] P. L. 1818, 19. 64. [2] 7 Watts, 394. [3] P. L. 1827, 498.

The most important Act bearing on the subject is the charter of the city of Allegheny, passed April 13, 1840.[1] The 13th section is in these words: "That the right of this Commonwealth to all lands within said city mentioned in the 4th section of the Act of Assembly of the 11th September, 1787, excepting such parts thereof as have heretofore been appropriated by grant and authority of law, is hereby granted and vested in the said city of Allegheny, *for such public uses* as are recited in said Act, and such *other public uses* as the Select and Common Councils may from time to time direct and ordain."

This Act thus expressly declares the title to all the unsold lands (including therefore the *minor reservations*) to be in the State, and vests it in the city, for the recognized public uses.

The *designation* of the public uses in the reserved squares was thus transferred by the State to the City Councils, and was enlarged to embrace other public uses equally necessary, but not specified in the original Act; for example, a town-hall and council chambers, public offices, engine-houses, etc.

The powers of the Councils were considered and defined in the case of the Commonwealth *v.* Rush.[2] In order to obtain funds to pay city debts the Councils had directed one of the reserved squares

[1] P. L. 1840, p. 303.

[2] 2 Harris, 186.

in the centre plat to be laid off into forty lots and sold. A lot was sold to a purchaser who was proceeding to erect a house thereon. He was enjoined against on the ground that this was not a lawful exercise of the power of the Councils. It was held that the charter of the city vested the right only for such *public* uses as are recited in the Act of 1787, and such other *public* uses as they might direct, but lots sold for *private* use were not such. It was held also that the dedication was *not* general but *special* only, for such public uses as should be within the power conferred on Councils. The Judge said the Act of 1840 does not, and cannot alter the original Act,[1] but places it in the power of the Councils to *designate* the particular parts of the square to be occupied for a market-house, public buildings, churches, etc. He thought, also, it would extend to a town-hall, or a *public useful* building. He held also that *unlike* a public square dedicated generally, it could not be considered as a *common or public highway*. This is the evident distinction between the declaration of a use (a present specification of the use) and a dedication to public use generally. The opinion of Judge Hepburn was sustained and adopted in the Supreme Court.

Bell *v.* Ohio and Pennsylvania R. R. Co.[2] fol-

[1] 2 Harris, 192, 3.

[2] 1 Casey, 161.

lowed, decided by a divided Court, one Judge not sitting. Chief Justice Lewis held in his opinion that the right of common was appurtenant, not appendant, and was extinguished by the act of the plaintiff in purchasing part of the land which was subject to the easement.

The next case, Allegheny City *v.* Ohio and Pennsylvania R. R. Co.,[1] was decided also by a divided Court, one judge not sitting. C. J. Lewis held that the railroad, as a highway, was a public use, and, as such, fell within the power of the Councils; who could lawfully grant fifty feet of the common for this use. The decree, however, was made by four of the judges restraining acts of the company outside of the fifty feet, and acts within it not strictly for use as a highway.

The effect of the legislation recited and the judicial decisions thereupon is clear; that under the Acts of 1787 and 1840 there is *no general dedication* of the public squares, but a reservation only for certain public uses specified in the Act of 1787, and such other *public* uses as the Councils should specify under the Act of 1840; and that the squares reserved are not reserved in such a sense as to make them public highways within the decisions in Commonwealth *v.* Bowman, 2 Barr; Rung *v.* Shoenberger, 2 Watts, and a like class of cases, holding

[1] 2 Casey, 356.

public squares to be dedicated to a general public use—that the common was dedicated to a private use (for pasture) leaving the title and the ground under the control of the State subject only to the use, which may be extinguished by consent or estoppel in equity.

THE BEAVER RESERVATION.

This reservation is contained in the same Act of 12th March, 1783, and is in these words: "And the further quantity of three thousand acres on the Ohio and on both sides of the mouth of Beaver Creek, including Fort McIntosh."

This reservation was surveyed probably in the month of April or May, 1785, but the original return is not to be found in the Land Office. The boundaries are as follows: Beginning at an elm on the Ohio River, thence running north two degrees and a half west three hundred and seventy-five perches to a white oak—south eighty-seven and a half degrees west ninety-seven perches to a white oak—north two and a half degrees west one hundred perches to a white oak—south thirty-seven and a half degrees west three hundred and ninety-one perches to a maple on the margin east side of Beaver River—thence from a stake on the west side of the Beaver, south two and a half degrees east one hundred and ninety-six perches to a white

oak—south eighty-seven and a half degrees west five hundred and eighty-seven and a half perches to a post and stones—south six hundred and forty-one perches to the Ohio River. The Ohio constituted the remaining boundary.

The first Act relating to this reservation was that of 28th September, 1791,[1] authorizing the Governor to lay out a town and out-lots for the uses therein mentioned. Referring to the Act of 1783, it empowered the Governor to direct the Surveyor-General to survey two hundred acres of land in town lots, on or near the ground where the old French town stood, in such manner as Commissioners appointed by the Governor should direct; and also one thousand acres adjoining on the upper side thereof, in out-lots, as nearly square as may be, of not less than five acres nor more than ten acres in each, "provided that the Governor shall *reserve* out of the lots of the said town so much *land* as he shall deem necessary for *public uses*."

I have italicized the words in this proviso to draw attention to their true character. It was *land*, not lots merely. This land was *reserved*, not dedicated, and it was for *public uses*, not specified, but left to be declared by competent authority.

[1] 3 Smith's L. 56.

This the Legislature, the only authority, has done from time to time.

On the return of the surveys to the Surveyor-General the Governor was authorized to sell one equal half of the town lots, and the whole of the out-lots, to the best advantage, and convey the same, "*excepting* always such as shall be *reserved* for public uses."

By the third section the streets, lanes, and alleys of the town and out-lots were *dedicated* as common highways forever.

The survey under the Act of 1791 was made by Daniel Leet, in the month of November, 1792, but in the absence of the Commissioners whose duty it was to direct the survey. In consequence of this want of authority on part of Leet, the Act of 6th March, 1793,[1] was passed, confirming the survey, repealing the appointment of Commissioners, and authorizing the Governor to sell and convey the lots contained in the survey, but subject to this important provision: "In the same manner and under the *same regulations, exceptions, and reservations*, as are prescribed in the said recited Act of the General Assembly," viz., of 28th September, 1791.

The Governor, acting under this provision, by a writing dated the 11th March, 1793, directed the

[1] 3 Smith's L. 90.

Surveyor-General to mark the *reservations* required by the Act of 1791, upon the survey of the town plat, including the squares which Leet had without authority marked as public squares on his plat. On the next day, March 12, 1793, the Governor issued his commission to sell, with instructions. The fifth instruction was in these words: "That the four lots in the centre and the corner lots of the town plat marked 'Public Square,' shall be announced as lands deemed necessary for public uses, and *reserved* by the Governor accordingly."

The effect of this action of the Governor was to bring these reserved squares within the intent and meaning of the reservations in the Act of 1791, and thus to prevent the unauthorized act of Leet in marking them as "Public Squares" from giving to this entry on the plat the appearance of a dedication of these squares to the public generally. This left the uses subject to the appointment of the Legislature, as first intended, which was afterwards exercised.

The next disposition of the reserved tract was a grant of five hundred acres, to be laid off by actual survey, adjoining the town of Beaver, "for the use of such school or academy as may hereafter be established by law in the town of Beaver." This was accordingly done by laying off the land on the southwest side of the town plat, embracing all the land running southwesterly down and by the Ohio

River to the end of the beautiful elevated plain below Beaver. The direction is contained in the 17th section of the Act of 12th March, 1800, the same law erecting the counties of Beaver, Butler, Mercer, Crawford, Erie, Warren, Venango, and Armstrong. The Trustees appointed for Beaver County were Jonathan Coulter, Joseph Hemphill, and Denny McClure.[1]

Another appropriation of the reserved tract by the Legislature was made in the Act of March 29, 1802.[2] The Surveyor-General was authorized to survey two separate lots, containing in the whole not more than fifteen acres, on the north side of the in-lots of the town of Beaver, so as to include several streams or springs of water; "and they are hereby granted to the inhabitants of said borough forever." This is the Act incorporating Beaver into a borough. It will be observed that the grant was to the "inhabitants." The Act confers no power over the lands granted upon the corporation. Nor does it confer on the corporation any power over the *reserved* squares.

By the Act of 21st February, 1803,[3] four Trustees, viz., John Lawrence, Guion Greer, James Alexander, and Samuel Johnston, were appointed to take charge of the land granted under the Act

[1] 3 Smith's L. 429.

[2] Pamphl. L. 1802, 120.

[3] 4 Smith's L. 12.

of 1800 for an academy. These Trustees were empowered to erect a suitable building on one of the *reserved squares* in the town of Beaver for an academy. This power was exercised at an early day, the building being erected on the middle lot of the southeast reserved centre square. It remained in use many years after 1829, the year the writer first saw it; probably as late as until 1860.

Beaver County was organized for judicial purposes under the Act of 2d April, 1803.[1] In this Act the Legislature again exercised its power over the reserved squares by authorizing the Commissioners to erect a court-house, prison, and public buildings on such part of the public squares in Beaver as they might think proper. Until a court-house should be erected the courts were to be held in the house of Abner Lacock, in Beaver. The court-house and offices were erected on the northwest centre reserved square, and the prison on the northeast centre reserved square.

The next sale of the town and out-lots of Beaver was authorized by Act of 2d March, 1805.[2] John Lawrence, Samuel Wilson, and David Potter were empowered to sell one-fourth of the town-lots of Beaver, "*excepting those heretofore reserved* for public uses," and one-fourth of the reserved tract at the mouth of Beaver in lots not less than five

[1] 4 Smith's L. 89. [2] Ib. 215.

nor more than ten acres each. A condition in the sales of the in-lots was that each purchaser should, within three years from the time of sale, build on his lot a house at least one story high, measuring not less than twenty-four by eighteen feet, having a chimney, and fit for the accommodation of a family. If not so improved the lot should revert to the Commonwealth. The time for making this improvement was extended to the first day of September, 1811. (Act 20th March, 1810.[1])

A sale of all of the remainder of the Reserve tract was ordered by the Act of 14th March, 1816,[2] to be made by Wm. Leet, John Wolf, Sr., and James Dennis, who were empowered to survey it in lots of not less than five and not more than ten acres in each. The purchase-money was to be paid within two years and patents issued. But on failure to pay, the Secretary of the Land Office was authorized on payment of the purchase-money and interest by any other person, to issue a patent to him. The limitation in this section was continued twice—the second until January, 1824.

The Legislature again exercised its power to appoint the uses over the squares reserved for public uses. The 4th section of the Act of 14th March, 1814,[3] enacted, "that the public square in the

[1] 5 Smith's L. 158. [2] 6 Ib. 131. [3] Ib. 132.

northwest corner of the general plan of the town of Beaver, which was *reserved* for public purposes, be and the same is hereby *appropriated* for a *burial-ground*." This is again a direct legislative assertion that these *reservations* had not been *dedicated*, and was an exercise of the power to declare the uses.

The next sale of lots in Beaver was under the Act of the 5th of March, 1816.[1] The commissioners were James Alexander, Guion Greer, and James Logan. They were directed to sell all the remaining lots, yet the *property* of the Commonwealth, "*excepting* those heretofore *reserved* for public uses." One-half of the purchase-money was to be paid previous to 3d Tuesday of December, 1816, and the other half on or before the 3d Tuesday of December, 1817. On failure to pay the purchase-money for one year, the Secretary of the Land Office was authorized to issue a patent to such person as would pay the sum due. This Act again asserts that the reserved lots were the property of the Commonwealth.

The Act of 10th April, 1826,[2] was the next authorizing the sale of the out-lots. The commissioners were Thomas Henry, Joseph Hemphill, and Robert Moore. The purchase-money was payable

[1] P. L. 1816, p. 96.

[2] Ib. 1826, p. 351.

one-fourth in hand, and the remainder in three equal annual instalments. Five hundred dollars of the proceeds were granted to the borough of Beaver for the supply of water.

The last sale authorized was under the Act of 15th April, 1834.[1] James Lyon, Benjamin Adams, and James Eakin, Jr., or any two were empowered to sell at public sale all the lots which had reverted to the Commonwealth laid out by John Lawrence, Samuel Wilson, and David Potter, under the Act of 2d March, 1805, "*excepting* those heretofore *reserved* for public uses"—and also all the lots sold by James Alexander, Guion Greer, and James Logan, under the Act of 5th March, 1816, which reverted to the Commonwealth—the purchase-money payable one-fourth in hand and the remainder in three equal annual instalments, patents to be issued on payment being made. $500 of the proceeds of the sale were granted to the borough of Beaver for the supply of water.

The next exercise of the power of the State over the *reserved* squares was contained in the Act of 29th March, 1824.[2] It appropriated a part of the southeast centre square to the Presbyterian congregation of Beaver, for a church, with a yard not exceeding one-quarter of an acre. The Trustees

[1] P. L. 1834, 487. [2] Ib. 1824, 149.

were James Allison, Thomas Henry, David Marquis, David Eakin, and Edward Waggonner.

This was followed by a similar appointment to the use of a Methodist Episcopal Church; contained in the Act of 10th April, 1826.[1] The 5th section empowered Benjamin Adams, Robert Darragh, Milo Adams, Joseph Vera, and John T. Miller, Trustees for the Methodist Episcopal Church, in the borough of Beaver, "to erect a church or house of worship on the southeast section of the public square in the town of Beaver, between the Academy and the southeastern boundary of said public square, and to inclose a yard not exceeding one-fourth of an acre."

These last two declarations of public uses were in the direct line of the legislative thought as seen in the other reservation at the mouth of the Allegheny River. Both Acts of 1787 and 1791 were the twin product of the same legislative intent which created these reservations of 3000 acres each. The Allegheny Act expressly included "places for public worship and burying the dead." The former Act was evidently before the draughtsman who drew the latter (1791), but its enumeration of uses being manifestly defective, in not including other customary buildings,[2] such as town halls, public

[1] P. L. 1826, p. 352.

[2] *Ante*, pp. 87 and 88.

offices, engine buildings, weigh-scales, etc., he rejected the method of enumeration, and reached the same end in a better way by saying "*for public uses.*" This embraced all buildings for uses deemed necessary, convenient, or proper, including houses of public worship and burial grounds expressly named in the Allegheny Act. Another conclusive evidence of the reserved legislative control over the uses, is seen in the Act of 1840, conferring on the Councils of the city of Allegheny the power to declare *other* public uses, besides those named in the Act of 1787. Under this authority the city has erected extensive public buildings, including all its city offices, a town hall, and the post-office.

The regard in which churches or houses of public worship were held in the last century, when these Acts of 1787 and 1791 were passed, will be seen by referring to the remarks relating to this subject in the case of the Allegheny reservation.[1] Indeed, it is impossible to interpret truly the Act of 1791 without referring to its immediate predecessor *in pari materia*, the Act of 1787.

In all the Acts relating to the Beaver reservation, and they were numerous, the minor reservations are called *reservations*, not *dedications*. The

[1] *Ante*, pp. 82, 83, 84, 89.

only dedications were of the highways, streets, lanes, and alleys.

The laws of William Penn, of the Province and of the State, the Constitution of 1776, and the decisions of the Supreme Court, all regard the institutions of the Christian religion, including its places of public worship, as eminently worthy of State protection, and as essential to the morals and general welfare of the people.[1] Hence the uniform current of legislation in relation to these minor reservations of the public squares has the effect of an assertion of the power of the State over them, to declare the uses from time to time.

In pari materia are the Acts relating to the reservations at Erie, Warren, Franklin, and Waterford. This part of the State was then a wilderness, and the State planted her reservations and towns to serve the purposes most conducive to her own interests and the general welfare. (See the concluding paragraph relating to these reservations under the Allegheny Act, page 89.)

[1] We have but to imagine a country without churches, to perceive how great the retrogression of mankind would be.

CHAPTER IX.

RESERVATIONS AT ERIE, FRANKLIN, WARREN, AND WATERFORD.

As already stated, the Supreme Executive Council, in 1788, in consequence of the suggestion of Andrew Ellicott, recommended to the Assembly the subject of reservations at the mouth of the Conewango, Venango, and Le Bœuf. The Assembly, by a resolution of 1789,[1] authorized the Council to have surveys, not exceeding 3000 acres, made for the use of the State at these places and at Erie, the "Triangle" by this time having become the property of the State. These surveys were made by John Adlum, and reported to the Council, and transmitted to the Assembly in September, 1789.

[1] The original survey of the Erie reservation by John Adlum is not to be found in the Land Office. As otherwise ascertained the boundaries appear to be these: Beginning on Lake Erie, thence south twenty-seven degrees east nine hundred and seventy-nine perches to a post; south fifty-three degrees west two thousand five hundred and ninety perches to a post; north twenty-seven degrees west ninety-three perches to Lake Erie; the lake constituting the remaining boundary.

On the 3d April, 1792, the Act of Assembly was passed opening to warrant settlement and survey the lands north of the Ohio and west of the Allegheny and Conewango Creek. The 13th section directed to be *reserved for the use of the State* at Presque Isle, formed by Lake Erie, the island forming the harbor, and a tract extending eight miles along the shore of the lake, and three miles in breadth, so as to include the tract already surveyed by virtue of a resolution of the Assembly, and the whole of the harbor formed by Presque Isle at the mouth of Harbor Creek, which empties into Lake Erie, along the shore on both sides of said creek, two thousand acres.

This was followed by the Act of 18th April, 1795,[1] to provide for laying out and establishing towns and out-lots within the several tracts of land heretofore *reserved for public uses*, situated at Presque Isle (Erie), mouth of French Creek (Franklin), mouth of Conewango Creek (Warren), and Fort Le Bœuf (Waterford). It recited the purpose to facilitate and promote the progress of settlements within the Commonwealth, and afford additional security to the frontiers thereof.

The Governor was directed to appoint two Commissioners to survey 1600 acres of land in town-lots, and 3400 acres adjoining for out-lots, at

[1] 3 Smith's L. 233.

or near Presque Isle. The streets were to be not more than one hundred and not less than sixty feet wide; and such lanes, alleys, and reservations for public uses made as the Commissioners should direct; no town lot to contain more than one acre, and no out-lot more than five acres, and the reservations not more than twenty acres. The town should be called Erie, and all the streets, lanes, and alleys be common highways forever.

A draft of the survey was required to be filed in the office of the Secretary of State; and the Governor was authorized to sell at public auction and on advantageous terms one-third part of the town-lots, and one-third part of the out-lots, on the condition that the purchasers should, within two years after the sale, build on each town-lot sold a house sixteen feet square, containing at least one brick chimney; patent not to be issued for two years, and not to vest title, and all previous payments to be forfeited, unless the condition be performed, and proof thereof made in the Court of Common Pleas, and certified to the Governor.

The Act further required one-half of the purchase-money to be paid within three months from the time of sale, and the other half, with interest, within one year; and in case payment be not so made, the sale to be void.

The Commissioners were also required to sur-

vey, previous to the survey of the town and out-lots, sixty acres on the southern side of the harbor of Presque Isle, one-half above and the other half below the bank, including the point at the entrance of the harbor; one lot of thirty acres on the peninsula at or near the entrance of the harbor; one other lot on the peninsula containing one hundred acres for the accommodation and use of the United States, in erecting and maintaining forts, magazines, arsenals, and dockyards, and other improvements deemed advantageous by the United States. Exception was made of mill-seats on the creek near the old French Fort, if they fell within the cession to the United States. Convenient roads also were to be made without injury to the United States for the use of the citizens; and nothing in the Act should be deemed to cede or transfer to the United States the jurisdiction or right of soil in the said lots, but only their occupancy and use.

The commissioners were required to survey also three hundred acres for town-lots, and seven hundred acres adjoining thereto for out-lots on the reservation at the mouth of French Creek, the town to be called "Franklin;" and also three hundred acres for town-lots, and seven hundred acres adjoining thereto for out-lots on the reservation at the mouth of Conewango Creek, the town to be called "Warren."

In each case the lands should be laid out into town-lots and out-lots, with streets, lanes, and alleys, and *reservations for public uses*, as the Commissioners should direct; no town-lot to contain more than one-third of an acre, and no out-lot more than five acres, and the reservations for public use not to exceed ten acres. The streets, lanes, and alleys were established as common highways forever.

A draft and report of the survey in each case (Franklin and Warren) were required to be returned and filed, and the Governor to proceed to sell at public auction and convey to the purchasers one-third of the town-lots and one-third of the out-lots in like manner, power, and authority, and subject to like regulations, terms, conditions, and forfeiture, as provided in relation to the town- and out-lots at Presque Isle.[1]

[1] None of the returns of surveys by John Adlum, of the reservations at Erie, Waterford, Warren, and Franklin, are to be found in the Land Office, except that at Waterford. It is supposed they were lost when the Rebels raided Pennsylvania, or so displaced they cannot be found. All the papers of the Land Office were hurriedly thrown into boxes, barrels, and hogsheads, and carried to a place of safety. The head fell out of a hogshead, and possibly other accidents happened. The papers dropped out and were scattered and torn. On their return many papers were found in pieces, and others were not to be found at all.

As to the reservation at Le Bœuf, a different provision was made. The ninth section recited the survey of a town by Andrew Ellicott at Le Bœuf, near the head of navigation of French Creek, and the plan communicated by the Governor to the Assembly and approved. It then enacted that the plan of the town so surveyed being first recorded in the office of the Secretary of the Commonwealth, and the original deposited in the office of the Surveyor-General, should be fully ratified and confirmed, as if made in pursuance of a previous law. The Commissioners were required, further, to survey five hundred acres adjoining the town plot for out-lots, with streets, lanes, and alleys; no out-lot to contain more than

The description, as taken from Adlum's survey of the reservation at Le Bœuf (now Waterford), is as follows:—

Beginning at east branch of Le Bœuf or French Creek at a sugar tree, thence north eighty-one perches to a hemlock, west one hundred and thirty-four perches to a white oak, north one thousand one hundred and thirty perches to an ash, east two hundred and seventy perches to a white pine, south one hundred and sixty perches to a post, east two hundred and seventy perches to a white pine, south one hundred and sixty perches to a post, east two hundred perches to a black ash, south one hundred and five perches to a white thorn, east forty perches to a beech, south seven hundred and thirty-two perches to a hickory, thence down French Creek to the beginning, containing three thousand and seventy-three acres and one hundred and fourteen perches.

five acres, and the *reservation for public uses* not to exceed in the whole ten acres. The town was to be called Waterford, and the streets, lanes, and alleys of the same and of the out-lots to be common highways forever.

A further provision for Waterford was a right of preëmption to those who had built houses on the lots therein. The Governor was required to sell at public auction one-third of the lots, and one-third of the out-lots, *exclusive of the reserved* lots, and of those appropriated to settlers, in like manner and subject to like regulations, restrictions, terms, conditions, and forfeitures touching the survey, return, sale, and conveyance of the town and out-lots at Presque Isle.

It was provided as to all these towns that one-half of the town-lots and the out-lots to be sold in pursuance of the Act, should be sold in the city of Philadelphia, one-fourth in Carlisle, and one-fourth in Pittsburgh.

The remainder of the Act relates to the military establishments at Fort Le Bœuf, and a fort to be established at Presque Isle.

A cession was also made to the United States for military purposes of two out-lots of the town of Franklin by Act of Feb. 1, 1796.[1]

[1] 3 Smith's L. 261.

The next legislation was a general Act for selling the reserved tracts at Erie, Franklin, Warren, and Waterford, April 11th, 1799.[1] It provided for actual surveys of the parts of these reservations not before laid out in town- and out-lots not exceeding one hundred and fifty acres in each, designating in the drafts the quality of each as first, second, and third quality. It granted five hundred acres to be laid off in each reservation for the use of such schools or academies as might be established by law in the said several towns. The surveys were to be returned to the Surveyor-General, and general drafts thereof to the office of the Secretary of the Commonwealth.

After these drafts were lodged as stated, copies were to be transmitted by the Governor to the Commissioners for sales of the towns; who were to give notice of the opening of the books, and the terms of sale were one-fifth of the purchase-money in hand, one-fifth in twelve months, one-fifth in two years, and the remainder in three years. No contract for sale was to be complete for fifteen days after the opening of the books and then the highest price offered to be accepted. The mode of proceeding by the Commissioners was prescribed. The following important condition was

[1] 3 Smith's L. 381.

declared. No title should vest unless the purchaser within three years after purchase made an actual settlement thereon, by clearing, fencing, and cultivating at least two acres for every fifty acres contained in one survey and erecting a messuage fit for the habitation of man, and residing thereon for five years from his first settlement. In default of such actual settlement, residence, and improvement, the purchaser should forfeit all payments, and the land be open to sale again.

The 4th section required the Governor to appoint four resident Commissioners in each town, who with two to be appointed by the Judges of the Common Pleas of Allegheny County, should appraise all the in- and out-lots in Franklin, Warren, and Waterford, and the first section in Erie, and out-lots adjoining. The Commissioners were to advertise the town for sale on the terms one-third of the purchase-money payable in hand, one-third to the Receiver-General in twelve months, and the remainder in eighteen months, for which bond should be given by the purchasers, the Governor to grant patents at the expiration of the eighteen months if the purchase-money be paid.

Provision was made that those who had purchased lots in the second and third divisions of Erie might exchange for lots in the first division at the same price they had paid. Those who had

paid for or improved forfeited lots should have a preëmption at the prices they sold for at former sales, provided they applied within three months after the passage of the Act.

The 6th section provided for the sale of the lot of ground reserved in Erie at the mouth of Cascade Creek at a price not less than fifty dollars an acre.

The Act of 19th Feb. 1800[1] repealed so much of any law which imposed on purchasers of lots in Erie, Franklin, Warren, and Waterford the condition of improving the same, and which prohibited the issuing of the patent without proof of such improvement. It extended also the time of application of those entitled to the preëmption of forfeited lots to twelve months. This period was also extended by Act of 26th Feb. 1801, for one year from that date.[2]

By the Act of 29th March, 1805,[3] the first section of the town of Erie was incorporated into a borough. This law conferred on the borough certain powers over parts of the reserved land for water-lots and wharves.

Two thousand dollars arising from sales of lots and out-lots in Erie were appropriated to public

[1] 3 Smith's L. 411.

[2] Ib. 412, note.

[3] P. L. 1805, p. 176.

county buildings in Erie. Act of 16th March, 1807.[1]

A supplement, March 20, 1811,[2] provided for the appraisement and sale of all the in-lots in squares, and the out-lots in the second extension of Erie. Two reputable citizens were to be appointed by the Governor, who, with the Commissioners of sales, should make the appraisement. The Commissioners were then to advertise and open books, and the highest price offered within sixty days was to be accepted, payable one-third in hand, one-third to the Secretary of the Land Office in twelve months, and the remaining one-third in two years —bonds to be taken and transmitted to the Secretary of the Land Office, and patents granted at the expiration of two years if purchase-money be paid.

This Act also provided that a part of the beach for twenty perches back from the water's edge, and from the upper corner of the Garrison tract down to lot No. 38, the property of John Kelso, should be and remain a public landing for the use of the public, until otherwise appropriated by law, and provided penalties for any obstruction thereof.

The State also ceded to the United States the use and occupancy of a part of the Erie reservation, containing not less than two nor more than

[1] P. L. 1807, p. 74. [2] 5 Smith's L. 212.

four acres for the site and erection of a lighthouse, to be laid off by Daniel Dobbins, James Weston, and James Pollock, as Commissioners, upon consultation with at least three of the captains or commanders of vessels. A plat or draft was to be made of the lot and transmitted to the Secretary of the Treasury of the United States. Act of April 2, 1811.[1]

The United States, having long before ceased to maintain a garrison at Presque Isle, and having vacated the lots at Waterford reserved for the use of the United States by Act of 18th April, 1795, and the buildings fast going to decay, in order to preserve them the State by Act of 20th March, 1812,[2] provided Commissioners, viz., Thomas Wilson, John Boyd, and John Lytle, to take charge of the property with power to lease, receive the rents, and pay them to the Treasurer of Erie County for the use of the county; the leases to be relinquished whenever the property should be wanted for the use of the United States or any other purpose. Provision was also made by the 3d section of the Act of 31st March, 1812,[3] for issuing patents for fourteen out-lots of five acres each adjoining the out-lots of the first section of the town of Erie, not included in Thomas Ree's

[1] 5 Smith's L. 263. [2] Ib. 337. [3] Ib. 381.

survey, sold by the Commissioner of Sales without authority of law.

An enabling Act, passed February 5, 1817,[1] authorized the borough of Erie to lease several, not exceeding ten, water-lots to the United States for a term not exceeding twenty-one years, and appropriate the rents to the improvement of the borough.

By the Act of 25th March, 1817,[2] incorporating an academy to be established at Erie, the five hundred acres appropriated out of the reserved land at Erie for the use of an academy in the Act of 11th April, 1799 (3 Smith's L. 381), were granted to the incorporated academy. Certain other lots, by number, were also granted to the academy, on which to erect buildings. A supplement[3] vested in the Trustees lot No. 2544, and empowered them to sell fifteen other lots in Erie, and with the proceeds to purchase four other lots.

These Acts relating to the academy at Erie were followed by the Act of 28th March, 1820,[4] authorizing the Trustees to receive $2000 out of the balances unpaid on out-lots in the reservation at Erie for which patents had not been granted. Various provisions to carry this into effect were added.

A supplement[5] to the Waterford Act authorized

[1] 6 Smith's L. 398. [2] P. L. 1817, p. 302.
[3] 7 Smith's L. 424. [4] P. L. 1820, p. 174. [5] Ib.

the Secretary of the Land Office to issue a patent to the Trustees of the academy at that place for eight lots in Waterford marked B, in the general plan on which the United States buildings had stood, to be disposed of by the Trustees as they should think best for the academy.

A further supplement authorized the Trustees of the Waterford Academy to sell to the best advantage and convey the tract of five hundred acres laid off, in the reserved tract adjoining Waterford, under the Act of 11th April, 1799, for a price not less than ten dollars an acre, and the proceeds invested for the use of the academy. Act 24th February, 1820.[1]

The last important Act deemed necessary to be referred to, was that of March 23, 1818.[2] It extended the limit in the 3d section of the Act of 11th April, 1799, for making settlement, improvement, etc., on purchased lots until the first day of April, 1824. The second section required the persons entitled to the benefit of this extension to pay in addition to the purchase-money an advance of twenty per cent. for rent and interest on the whole sum from the time the interest commenced on the original purchase-money.

Of the foregoing reservations the same may be

[1] P. L. 1820, p. 39. [2] 7 Smith's L. 114.

said as was said of the reservations at Allegheny and Beaver. They were not *dedications* to the public, but *reservations* to the State herself. They are products of the same thought, and bear the same interpretation: that is, her reservation for public uses were to enable her to declare them in such manner as would be beneficial to herself as well as to the public. Hence she constantly passed laws controlling and disposing of them as she deemed best for all interests, her own and others.

CHAPTER X.

GENERAL DISPOSITION OF THE LANDS UNDER THE ACT OF APRIL 3, 1792.

The last, and most important, division of the subject, is the general disposition of the lands in the region north of the Ohio River, and west of the Allegheny River and Conewango Creek.

The prime intention of the State, as already stated, was to reward the soldiers of the Pennsylvania Line in the Revolutionary War for their meritorious services; to raise money; plant population in advanced positions for the protection of the western border of the State, and to facilitate improvement. These objects she had provided for in the redemption of the certificates of depreciation given to the soldiers, donations to them in land for their services, and by reservations at important points, for speedy sales, to raise money, and invite settlements.

These patriotic purposes left large sections of territory undisposed of. All of the western territory, excepting a small portion on the eastern side of the Allegheny River, adjacent to Fort Pitt,

was wild and uninhabited, and subject to Indian incursions. From 1780 until 1795 there was no safety from invasion and massacre. In 1782 Colonel Crawford was defeated, and burned at the stake, with a barbarity and suffering almost incredible. In the same year Hannahstown, in Westmoreland County, was ravaged, and thenceforward the country from Wheeling to Fort Pitt was constantly threatened. General Harmar was defeated on the Miami in 1790, and General St. Clair in 1791; and in 1792 General Wayne began his preparation for his Indian campaign, which lasted until 1795. This condition of the western country bore directly upon the legislation of 1792.

The General Assembly of Pennsylvania, conceiving in that year that the time had come to make a general provision for the sale and settlement of this territory, passed the Act of the 3d of April, 1792,[1] entitled "An Act for the sale of the vacant lands within this Commonwealth." After providing for the sale of the remainder of the unsold lands lying within the purchase of the Indians in 1768, the Act offered all the land lying north of the Ohio River, and west of the Allegheny River and Conewango Creek—excepting such parts as had been, or thereafter should be,

[1] 3 Smith's L. 70.

appropriated to any public or charitable purpose—to persons who would *cultivate, improve, and settle* upon the same, for the price of seven pounds ten shillings for every one hundred acres, with an allowance of six per centum for roads and highways, to be located and secured as provided in the Act.

To understand the evils of this legislation, and the vice which led to the greatest litigation and uncertainty of title which ever ruined the prosperity of a new country, and set it back many years, it may be stated in this place that the Assembly committed the sin of enacting a duplex and adverse system of acquiring title, which placed Land Office rights and settlement claims in direct hostility to each other, and led to a contest in the courts and on the lands, which lasted until long after the writer came to the bar. One mode was the purchase of a warrant at the Land Office for a tract of land to be surveyed thereupon, not exceeding four hundred acres and the allowance of six per cent., the grantee paying the purchase-money and fees of office into the State Treasury; to be followed by actual settlement and improvement. The other mode was by an actual settlement and improvement, in the first instance, made upon a tract not exceeding four hundred acres and allowance by any person desiring

to settle, improve, and reside upon the same. In both instances a survey was required to be made by the deputy surveyor of the district in which the land lay. The warrant was so called, because in its terms it was an authority or order to the Surveyor-General to survey a tract applied and paid for, and the Surveyor was required to make the survey thereof forthwith. On the other hand, an actual settlement and improvement being made, the 8th section of the Act required the deputy surveyor of the district, upon application of the settler, to make a survey of the tract upon which he had settled, and enter it on his books.

Had there been no Indian war probably there would have been fewer adverse claimants to the same tract. The settlers under warrants and those for improvements for themselves, would have gone on to the lands at an early date, and priority of entry would then have settled many disputes. But while those who desired to acquire land by settlement and improvement were prevented by Indian hostility, the capitalists, having money, and being near to the Land Office in Philadelphia, proceeded at once, procured their warrants, and lodged them in the hands of the deputy surveyors for execution. Hence much the largest number of the warrants were taken out in 1792. On the 3d of April, 1792, the day of the passage of the law, Daniel Brodhead, then Surveyor-Gene-

ral, took out two warrants for lands lying on Walnut Bottom Run, opposite the great falls of the Beaver, where the town of Beaver Falls now stands. On the 14th of April, 1792, the largest proportion of the warrants was taken out by John Nicholson, then the Comptroller-General of the State, and others, which afterwards became the property of the Pennsylvania Population Company. Another large number of warrants was taken out in April, 1792, and April and August, 1793, in behalf of a foreign company known as the Holland Company. Besides, there were many individual capitalists who purchased or afterwards became owners of these early warrants, such as Judge James Wilson, Benjamin Chew, Archibald McCall, and other eastern residents. So great was the collective number of the warrants that, in the language of the old residents, the country was "thumbed over" from the Ohio to the Lake. Surveys on these warrants were made generally in 1794 and 1795. As a consequence they would have given undoubted titles had it not been for the terms of the 9th section of the Act of 3d April, 1792, which were variously interpreted by lawyers, courts, and people. This 9th section (to be copied in full hereafter) provided that no warrant *or* survey of these lands should vest title unless the grantee had prior to the date of the warrant made,

or *should within two years after the date* of the same, make an actual settlement thereon, by clearing two acres for every one hundred in the survey, erecting a messuage and residing thereon for five years. The section then provided for a forfeiture of the land in case of a default in these requirements.

But the Indian war continued without abatement. In the winter of 1792–3, General Wayne encamped his army at Legionville, a short distance below the present town of Economy, and on land now owned by the Harmony Society. His purpose was to drill and discipline his soldiers well to meet their Indian enemies—a want of proper discipline having led largely to the defeats of Harmar and St. Clair.

The next winter (1794) he encamped at Fort Washington (Cincinnati), and in the summer made his expedition to the Maumee, where he defeated the Indians on the 20th day of August. His treaty of peace with the Indians was not made until the 3d of August, 1795. It was ratified by the United States Senate on the 22d December, 1795. This became the first signal of safety for entry and settlement on these lands. Only a very few adventurous spirits had gone on before, chiefly in the vicinity of the forts. The spring of 1796, became, therefore, the period when the largest wave of settlement rose, and the settlers took possession.

The current opinion among the settlers, the result partly of legal advice, partly of self-interest, and to some extent of ignorance and hostility to capitalists who had bought up the lands, was, that the owners of the warrants, by reason of non-entry settlement and improvement, within the two years from the date of the warrants according to the requirement of the 9th section of the Act of 3d April, 1792, had forfeited their titles, and the lands were open to entry and settlement. As a consequence the settlers sat down upon the lands they selected, regardless of the surveys made on the warrants. This led at once to alarm among the warrant holders, and to steps to vindicate their rights.

To understand properly the events following, it is necessary to state the different interpretations placed upon the 9th section of the law. The settlers believed the warrants were absolutely void, or "dead," as they said, by reason of non-settlement, etc., within two years from their date. The warrant-holders, whom I shall call "warrantees" in the language of that day, held that the condition of settlement being *subsequent* was absolutely gone by the prevention of the enemies of the United States (the Indians), and by their persistence to settle within the two years. The legal profession in the western part of the State

held an intermediate interpretation, that neither the warrants were void, nor the condition of settlement gone; but that the latter was only suspended until the prevention ceased, which ended with the ratification of the treaty of peace on the 22d December, 1795; and then, resuming its force, the warrantees had two years, viz., until the 22d December, 1797, to perform the condition by making the required settlement, etc.

Referring to the legal profession in the West, I may add some of the ablest lawyers in the State then graced the Western Bar. The following list of lawyers admitted at the first court held in Beaver County in February, 1804, will serve to give character to the lawyers of that day, viz:—

Alexander Addison (Judge), Thomas Collins, Steele Sample, A. W. Foster, John B. Gibson (the Chief-Justice), Sampson S. King, Obadiah Jennings, Wm. Wilkins, James Allison, John Simonson, David Redick, Parker Campbell, David Hays, C. S. Sample, Henry Baldwin, Thos. G. Johnston, Isaac Kerr, James Mountain, Robert Moore, Wm. Ayres, and Wm. Purviance. To these I may add James Ross and John Woods, of Pittsburgh. Many of these gentlemen became in after life eminent in the State and the United States.

Connecting itself with the current of events as to these warrant titles, it may be said also that the Assembly, containing many farmers, sympathized largely with the settlers; while some of the judiciary, drawn from the East, looked favorably upon the cause of the warrantees.

The Assembly, perceiving that so many of these lands had been taken up under warrants, and not settled, and fearing that the prime intent of the Act of 1792 was being frustrated by non-settlement, on the 22d of April, 1794,[1] passed an Act forbidding, after June 15, 1794, more warrants for unimproved land within "that part of the Commonwealth commonly called the New Purchase, and the triangular tract upon Lake Erie," except in favor of persons claiming the same by virtue of some settlement and improvement being made thereon, with a proviso in favor of certain persons who had credit balances due to them in the Land Office on certain unsatisfied warrants, who were allowed until the first day of January, 1795, to take out warrants upon such credits. Still more effectually to guard the settler's interests the Act provided that no warrants, except wherein the land is particularly described (technically known as "descriptive warrants"), should in any manner

[1] 3 Smith's L. 184.

affect the title or claim of any person having made an actual improvement before such warrant is entered and surveyed in the deputy-surveyor's books. The office of the deputy-surveyor being in the district in which the land lay was thereby convenient of access to the settlers, and his books gave notice of the lands appropriated.

The interference in favor of the settlers was more decided in the Act of 22d September, 1794,[1] in these words: "That from and after the passing of this Act no applications shall be received at the Land Office for any lands within this Commonwealth, except for such lands whereon a settlement has been or hereafter shall be made, grain raised, and a person or persons residing thereon." The second section annulled all applications on file after April, 1794, on which the purchase-money had not been paid. Provision was also made for the benefit of certain credits in the Land Office, and for patents. This Act extended to the whole State, and included, therefore, these lands and the triangle at Lake Erie.

On the other hand, the officers of the Land Office and the Board of Property, down to about the year 1800, held that the condition of settlement was extinguished and wholly gone, by the preven-

[1] 3 Smith's L. 193.

tion caused by the Indian war, and a persistence to make the settlement during the two years from the date of the warrants. There was evidence of this persistence on part of the Holland Company. On this ground the Board of Property, as then composed, granted to the Holland Company eight hundred and seventy-six patents, and so late as February 4, 1799, granted numerous patents to the Pennsylvania Population Company. These patents became known as "Prevention Patents." But a change in the administration of the State Government took place by the election of October, 1799. Thomas Mifflin had been the Governor from 1790 until 1799, when Thomas McKean succeeded him, remaining in office until 1808. A different doctrine was held by the Board of Property under Governor McKean, and it was now held that the Indian war merely *suspended* the required settlement under the 9th section of the Act of 3d April, 1792.

The Holland Company having renewed its application for prevention patents, the Secretary of the Land Office refused to issue them. The company thereupon instituted proceedings by *mandamus*, in the Supreme Court, against Tench Coxe, Esq., the Secretary, to compel him to issue the patents.

As several companies played conspicuous parts

in the great controversy under the 9th section of the Act of 1792, it is proper to notice them briefly.

The Holland Land Company, consisting of a company of Holland capitalists, had had large sums of money invested in America during the Revolutionary War. After the declaration of peace, concluding not to remove their money, they purchased large bodies of land chiefly in New York. They invested also in Pennsylvania, first in lands, surveyed in large tracts, generally of one thousand acres each on the east side of the Allegheny River within the purchase of 1784. After the passage of the Act of 3d April, 1792, they purchased many warrants of four hundred acres each, to be located on the west side of the Allegheny and the Conewango, and within the Erie Triangle. They purchased and paid for eleven hundred and sixty-two warrants of four hundred acres in Districts Nos. one, two, three, six, and seven. These were issued for them in April, 1792, and in April and August, 1793. They were surveyed chiefly in 1794 and 1795. This company took the lead in the litigation referred to.

The Pennsylvania Population Company was next in importance. John Nicholson, the Comptroller-General, soon after the passage of the Act of 3d April, 1792, applied for three hundred and

ninety warrants, to be located within the Erie Triangle, and two hundred and fifty warrants to be located on the waters of Beaver Creek. He then organized the Pennsylvania Population Company, of which he became President, and Messrs. Cazenove, Irvine, Leet, Hoge, Mead, and Stewart, managers. Nicholson conveyed his claims to this company, they paying the purchase-money to the State, and in addition paying for five hundred more warrants. The capital of the company consisted of twenty-five hundred shares, laid out in the purchase of five hundred thousand acres of land. Their first general agent was Ennion Williams, who belonged to the Society of Friends. He was appointed May 26, 1795, and February 1, 1805. Their next general agent was Enoch Marvin, appointed May 2, 1809. These gentlemen figured largely in the controversies with the settlers; both, however, being gentlemen of kindly feeling and just views.

For the purpose of performing the condition of settlement under the Act of 1792, this company offered to persons willing to settle their land, and make proof of the settlement to obtain the patents, a gratuity of one hundred and fifty acres; and, in many instances, also sold to them an additional quantity, at a certain price, the whole not generally exceeding two hundred acres.

The company dissolved in the year 1812, and their lands passed chiefly to William Griffith, of New Jersey, and John B. Wallace, of Philadelphia. These gentlemen soon failed, owing to the disastrous times following the war of 1812–15, ruining not only them but many others. The writer has a vivid recollection of the general insolvency prevailing in Pittsburgh in the years 1821, 2, 3.

Mr. Griffith and Mr. Wallace divided their lands, Griffith taking the contracts of settlement and sale, and Wallace the unseated and unsold lands.

Griffith's interest finally passed into the hands of Wm. Meredith and John Day, assignees of Maurice Wurtz and Wm. Wurtz, of Philadelphia, the largest part of Mr. Wallace's going to the Farmers and Mechanics' Bank, of Philadelphia, to which he was indebted. The deed to the bank is dated December 1, 1818. It is partly copied into the Appendix, as a matter of curiosity to Philadelphians, who will recognize in the names of the warrantees in the schedule many names of Philadelphians in the last decade of the last century. The explanation is this: In the practice of the Land Office only one warrant could be issued to one person. Hence the capitalists who purchased many warrants were compelled to use the names of many persons, who afterwards made over

to them the legal title by "deeds poll." This custom was so general that the courts recognized these persons as trustees for those who paid the purchase-money and the surveying fees. As the evidence of the identity of the persons paying the purchase-money certain "blotters" in the Land Office, known as John Keble's[1] Blotters, became famous, in which he had entered the names of purchasers of warrants, etc. These were much used in the trial of ejectments.

In 1806, the Board of Managers of the Pennsylvania Population Company consisted of James Gibson, President, and Paul Busti, William Crammond, Henry Drinker, Jr., Thomas Astley, and John Waddington, managers.

The titles of the company were vested in John Field, William Crammond, and James Gibson as Trustees, who afterwards conveyed to Robert Bowne, a new Trustee. All these names appear frequently in the titles to these lands.

In January, 1812, the stockholders of the company having dissolved the association under the terms of their agreement, directed all their estate, real and personal, to be sold at auction, and appointed James Gibson, Henry Drinker, Jr., Thomas Astley, William Griffith, John B. Wallace, and William Crammond, as managers and agents to

[1] 8 Watts, 111, 112; 3 Casey, 15, 16.

attend to the business. All their estate, real and personal, was sold at auction at the Merchants' Coffee House in Philadelphia on the 29th and 30th days of June, 1812.

The North American Land Company was one of vast proportions, formed in 1795, in Philadelphia by Robert Morris, John Nicholson, and James Greenleaf. Its investments were largely in other States, chiefly in New York. But little is known of this company in this State, excepting that in recent years the settlement of its affairs has undergone judicial investigation in Philadelphia.

The mandamus case, before referred to, of the Commonwealth *v.* Tench Coxe, brought at the instance of the Holland Land Company to compel the issuing of patents to them is found in 4th Dallas's Reports, 170 to 205, and furnishes a very full history of the controversy between the warrantees and the settlers. It contains, also, the form adopted and approved by Attorney-General Ingersoll for the certificates of prevention, framed to obtain the patents, since known as "Prevention Patents."

This case brought up the question of the interpretation of the 9th section of the Act of 3d April, 1792; which is in the following words:[1]—

[1] 3 Smith's L. 73.

"That no warrant or survey, to be issued or made in pursuance of this Act, for lands lying north and west of the rivers Ohio and Allegheny, and Conewango Creek, shall vest any title in or to the lands therein mentioned, unless the grantee has prior to the date of such warrant made or caused to be made, or shall within the space of two years next after the date of the same, make or cause to be made, an actual settlement thereon, by clearing, fencing, and cultivating at least two acres for every hundred acres contained in one survey, erecting thereon a messuage for the habitation of man, and residing, or causing a family to reside, thereon for the space of five years next following his first settling of the same, if he or she shall so long live, and in default of such actual settlement and residence, it shall and may be lawful to and for this Commonwealth to issue new warrants to other actual settlers for the said lands, or any part thereof, reciting the original warrants, and that actual settlements and residence have not been made in pursuance thereof, and so as often as defaults shall be made for the time and in the manner aforesaid, which new grants shall be under and subject to all and every the regulations contained in this Act. Provided always, nevertheless, that if any actual settler or any grantee

in any such original or such succeeding warrant shall by force of arms of the enemies of the United States be prevented from making such actual settlement, or be driven therefrom, and shall persist in his endeavors to make such actual settlement as aforesaid, then, in either case, he and his heirs shall be entitled to have and to hold the said lands, and in the same manner as if the actual settlement had been made and continued."

The controversy centered around the provision in the section in regard to the time of persistence in making the settlement, and the effect of the Indian war upon it, by extinguishment or suspension of the condition. Chief Justice Shippen held that "the Legislature could only mean to exact from the grantees (warrantees) their best endeavors to make the settlements within the space of two years from the date of their warrants, at the end of which time, if they have been prevented from complying with the terms of the law by the actual force of the enemy, as they had justly paid for the land, they are entitled to their patent."

Justice Yeates delivered the opposite opinion, which may be summed up in the paraphrase which he made of the 9th section, viz: "Every warrant-holder shall cause a settlement to be made on his lands within two years next after the date of his

warrant, and a residence thereon for five years next following the first settlement, on pain of forfeiture by a new warrant. Nevertheless, if he shall be interrupted or obstructed by external force from doing these acts within the limited periods, and shall afterwards persevere in his efforts in a reasonable time, after the removal of such force, until these objects are accomplished, no advantage shall be taken of him for a want of a successive continuation of this settlement."

Justice Smith concurred with Yeates, J., and Brackenridge, J., gave no opinion, having been retained at the bar for the Holland Company. He had also acted as attorney for settlers in some Western cases.

This doctrine followed previous decisions in respect to the nature of a settlement, which required a *personal* residence as its prime characteristic, and not *mere improvements* on the land. (Ewalt *v.* Highlands; McGlaughlin *v.* Dawson; Scott *v.* Williams; Morris *v.* Neighman.[1] See, also, Hazzard *v.* Lowry, 1 Binney, 166.)

But the Commonwealth *v.* Coxe did not end the controversy on the 9th section. The Assembly was memorialized on both sides. This brought about the Act of 2d April, 1802,[2] to raise what

[1] 2 Smith's L. in note, 208 to 211. [2] 3 Ib. 506.

was known as the "Feigned Issue," to try the questions in dispute. The preamble recites in full the 9th section of the Act of 3d April, 1792; the difficulties and disputes between the warrantees and settlers; the inability to secure a fair trial where so many persons are interested; and the fact that the Holland Land Company and the Population Company had applied to the Supreme Court for a *mandamus* to compel the Secretary of the Land Office to complete their titles; and also the complaints of these companies, and the applications of the settlers to the Legislature for redress. It then proceeds to require the Supreme Judges to meet and devise a form of action for trying and determining the question, whether or not the warrants are void against the Commonwealth by reason of non-settlement; and whether grants of the Land Office are good founded upon prevention certificates given by Justices of the Peace, without other evidence of the nature and circumstances being given. The form thus devised by the Judges was to be transmitted to the Governor, who, with the assistance of the Attorney-General, was to carry it into effect. By it the questions of law and fact were to be heard and decided at Sunbury before the Judges of the Supreme Court and a jury. It was made competent, also, for the jury, under the constitutional

direction of the Court, to decide upon the law and the facts, and, if they thought proper, to bring in a general verdict. Any of the parties could give evidence of the prevention certificates, and of the circumstances of the country at the time to which the certificates related, and any other fact tending to illustrate the questions aforesaid. Further instructions were given to the Judges to provide for the admission of parties and for notices, and to require the Secretary of the Land Office to attend the trial, with such books, papers, and documents as they may specify, or he may deem material.

It is evident by the mode of decision of the law and fact by the jury, no injustice was intended to be done to the settlers. As a further protection, and to prevent confusion of title and lawsuits, it was enacted that the Secretary of the Land Office should grant no new warrant for land which he had reason to believe had already been taken up under a former warrant. On every application filed, proof should be made by one disinterested witness that the applicant was in actual possession, specifying the time when possession was taken. If the decision of the court and jury should be in favor of the settlers, warrants were to be granted on payment of the purchase-money according to the priority of application.

The Governor was authorized to appoint not

more than two counsel to assist the Attorney-General.

The case was made up and known as the Attorney-General *v.* The Grantees under the Act of April, 1792, and is found in 4 Dallas, 237 to 245. Yeates, Smith, and Breckenridge, JJ., met at Sunbury, on the 25th of November, 1802, a jury was empannelled, and the case argued by Attorney-General McKean, W. Tilghman, and Cooper. Chief Justice Shippen did not attend. No one represented the Grantees, the Holland Company having declined to appear, but their reasons for not discussing the subject were given in a letter to the Judges dated June 21, 1802, found at page 238 of 4 Dallas, signed by J. Ingersoll, W. Lewis, and A. J. Dallas. The decision in the case of the Commonwealth *v.* Coxe having been made by the same majority of the Judges, it is probable that the Chief Justice and the Holland Company thought it useless to attend.

The case was heard *ex parte*, and the opinion delivered by Judge Yeates, following in the track of his former opinion in Coxe's Case. He also discussed, with reference to authorities, the doctrine of precedent, and *subsequent* conditions; arriving at the same conclusions he had before reached.

The decision may be summed up as follows:—

1. "Prevention by force of arms of enemies does not absolutely dispense with and annul the conditions of actual settlement, improvement, and residence; but it suspends the forfeiture by protracting the limited periods. Still the condition must be performed by the warrantee *cy pres*, whenever the real terror arising from the enemy has subsided, and he shall honestly persist in his endeavors to make such settlement, improvement, and residence, until the conditions are fairly and fully complied with."

2. "The patents and the prevention certificates recited in the patents are not conclusive evidence against the Commonwealth, or any person claiming under the Act of 3d April, 1792, of the patentees having performed the conditions enjoined on them, although they have pursued the form prescribed by the Land Office. But the circumstance of recital of such certificate will not *ipso facto* avoid and nullify the patent if the actual settlement, improvement, and residence, pointed out by law, can be established by other proof."

The jury found a general verdict for the plaintiff, and judgment was rendered in favor of the Attorney-General against the Grantees.

The Holland Company, however, was not content to abide by the decisions of the State Court. Another action was brought, therefore, in the

Circuit Court of the United States, sitting at Philadelphia, before Washington, J., of the Supreme Court of the United States, and Peters, District Judge. The case is entitled Huidekoper's Lessee *v.* Douglass (found in 4 Dallas, 392). The plaintiff claimed title under the Holland Company, and the defendant was a settler under the Act of 3d April, 1792. In order to test the question fully, the case went up, by a division of opinion of these Judges, to the Supreme Court of the United States. The opinion in the latter Court was delivered by Marshall, C. J., holding the law otherwise than as decided by the State Court. The result is thus stated:—

"A grantee by warrant under the Act of 1792, who by force of arms of the enemies of the United States was prevented from settling and improving said land and residing thereon from the 10th of April, 1793, the date of the warrant, until the first day of January, 1796, but who during the said period persisted in his endeavors to make such settlement and residence, is *excused* from making such actual settlement as the enacting clause of the 9th section of the said law prescribes, to vest a title in the said grantee."

And further, in such case the grantee "persisting in his endeavors to make such settlement and residence, vests in such grantee a *fee simple* in

the said land; although, after the said prevention ceased, he did not commence, and within the space of two years thereafter, clear, fence, and cultivate at least two acres for every hundred acres contained in his survey for the said land, and erect thereon a messuage for the habitation of man, and reside or cause a family to reside thereon for the space of five years next following his first settling of the same, the said grantee being yet in full life."

The effect of this judgment in favor of the warrantees would have been disastrous upon the interest of the State. As nearly the whole section north of the Ohio and west of the Allegheny and Conewango (excepting the sold Depreciation and drawn Donation Lots) had been taken up under warrants numbered by the thousand, it would have left this portion an unsettled wilderness, in violation of the fixed policy of the State to fill it up with settlers under the *warrants*, as well as with those settling for themselves. But the question being purely a State one, and her Judges not being bound by the doctrine of the Supreme Court of the United States (except in single cases of exceptional jurisdiction), they persisted in their interpretation of the 9th section of the Act of 3d April, 1792, in order to maintain the well settled and absolutely essential improvement policy of

the State, and their opinion became the law of the titles under that Act.

Yet there were Judges of the State who, bound by and following the State decisions, thought the opinion of Chief Justice Marshall the only sound doctrine of the Act. Such was the opinion of Chief Justice Gibson, whose early impressions were eastern, and whose earlier opinions were not always followed by himself in later years. Notably this was the case in the application of the doctrine of the Statute of Limitations in cases between warrantees and settlers. He began in the strictest *pedis possessio* of the settler, as announced in Miller *v.* Shaw (7 S. & R. 137), and ended in the extreme doctrine of a *presumptive* ouster, as labored in McCall *v.* Nealy (3 Watts, 71), a doctrine which lay at the bottom of the famous tilt between Black and Lewis in Barney Hole's Case.

It seems to me, however, that the interpretation of the 9th section of the Act of 1792, as given in Huidekoper's Lessee *v.* Douglass, cannot be sustained. It will be seen that Chief Justice Marshall regarded the section as inconsistent and repugnant in terms, and therefore changed its reading in order to reach the conclusion he came to. It will be noticed also that his interpretation is wholly *literal*, so much so it is obnoxious to the

maxim, *qui hæret in litera, hæret in cortice;* and fails to regard the most important feature which characterized the whole law. Had he recurred to the second section he would have been impressed with its *express* language, which accorded with the entire current of the legislation of the State in reference to these wild lands. It reads thus:[1] "That from and after the passing of this Act, all other lands belonging to this Commonwealth, and within the jurisdiction thereof, and lying north and west of the rivers Ohio and Allegheny, and Conewango Creek, except such parts thereof as heretofore have been, or hereafter shall be, appropriated to any public or charitable use, *shall be and are hereby offered for sale to persons who will cultivate, improve, and settle the same, or cause the same to be cultivated, improved, and settled, at and for the price of,*" etc.

In direct accordance with this language the ninth section was made applicable to *warrantees* as well as settlers. It says "*no warrant* or survey . . . *shall vest any title* in or to the lands therein mentioned unless the grantee has, prior to the date of such warrant, made or caused to be made, or *shall within the space of two years after the date of the same, make or cause to be made an actual settlement thereon,* by clearing," etc.

[1] 3 Smith's L. 71.

Again, this section applies to original settlers as well as warrantees, and therefore must be construed in view of the expressed purpose of the Act to apply to both classes.

Thus the law never offered these Western lands for sale, except upon the very condition of settling the same, and thus carrying population into the new country. Besides, this was in accord with all other legislation, expressing this policy of the State, and to be considered *in pari materia*. For example, the Acts of December 21, 1784,[1] September 16, 1785,[2] December 30, 1786,[3] April 22, 1794,[4] September 22, 1794,[5] and April 2, 1802.[6] This policy is stated in express language in the preamble to the Act of 18th April, 1795 (3 Smith's L. 233), laying out the towns of Erie, Franklin, Warren, and Waterford, viz: "In order to facilitate and promote the progress of settlements within this Commonwealth, and to afford additional security to the frontiers thereof."

The effect of the doctrine of the United States Court would have left this entire northwest region an unreclaimed wilderness, without power in the State to remedy it. For a title *vested in fee* by prevention, would leave the lands under the sole

[1] 2 Smith's L. 274. [2] Ib. 342. [3] Ib. 395.
[4] 3 Ib. 184. [5] Ib. 193. [6] Ib. 510.

control of the grantees who pay their money, and they could settle or sell them when and how they would please. These lands would have become the subject of mere speculation to be sold in blocks or otherwise, as the interests or fancy of the capitalist owners might have dictated.

The State doctrine was not only in accord with the general policy of the State, as set forth in the Acts just referred to, but with the very purpose, intent, and language of the Act of 1792 itself. Besides, it did no injury to the warrantees. They were bound to make a settlement and improvement, and the State doctrine merely *suspended* performance, giving them the opportunity of complying with the condition required in order to "vest title." They were favored by delay, not injured, in view of the express language of the laws.

It will be seen, therefore, it was the merest technicality to apply the common law doctrine of *subsequent* conditions, in ordinary contracts between man and man, to a question of great State policy, intended to serve the welfare of a frontier population and important State interests.

Again, the State courts, as the logical consequence of their doctrine, held that the warrantee was protected against any adverse entry before the 22d of December, 1797; in other words, until

two years had expired after the ratification of the treaty of Fort Granville. And, further, they held that an adverse entry was still unlawful, even after the 22d of December, 1797, without a vacating warrant procured from the State.

Before noticing this feature more particularly, I may refer to several Acts of the Assembly bearing on these titles, and first the Act of 22d April, 1794.[1] It provided that no application should be received after the passage of the Act for unimproved land in the new purchase or the Triangle at Erie. Also that no warrant should issue after the 15th of June for lands in the new purchase and the Triangle, except to persons claiming by settlement and improvement; and all applications on file after that date on which the purchase-money had not been paid should be void. Exceptions were made in favor of persons who had credits for balances due in the Land Office. Another provision in favor of settlers was that indescriptive warrants should not affect their title by actual improvement before the entry of the warrant on the deputy-surveyor's books.

This was followed by the Act of 22d September, 1794,[2] which forbade the receiving of applications for land in any part of the Commonwealth except for lands on which a settlement has been made,

[1] 3 Smith's L. 184. [2] Ib. 193.

grain raised, and a person residing thereon. It also made void all applications filed after April 1, 1784, on which the purchase-money has not been paid. There was a proviso in favor of a person having a credit in the Land Office.

Then came the Act before referred to on which the feigned issue was raised, viz., April 2, 1802.[1] The fourth section provided that after its passage no new warrant should be granted for land the Secretary had reason to believe had been taken up under a former warrant, and provided for filing the application and giving a copy to the applicant. At the end of this section is an important provision, which, being omitted in the edition of Purdon of 1830, led to important results to be referred to hereafter.

Following in the wake of the Act of 1802 an Act was passed April 3, 1804,[2] which during its limited existence of two years was important to the settlers. Within that time it gave the effect of vacating warrants to the applications of settlers under the Act of 3d April, 1792, describing particularly the lands applied for, and vouching such other requisites as are provided for in the Act of 22d September, 1794. The Act was entitled "An Act for ascertaining the right of this

[1] 3 Smith's L. 506. [2] 4 Ib. 199.

State to certain lands north and west of the rivers Ohio and Allegheny and Conewango Creek." The second section authorized the Governor to employ able counsel to attend to the interest of the State in pending suits in the United States Court.

This Act was continued in force until the 1st April, 1807, by an Act of 28th April, 1806.[1] In Shippen *v.* Aughenbaugh,[2] decided in 1806, Judge Yeates held that an application under the Act of 1804, in the nature of a vacating warrant, taken out after suit brought, was not evidence.

In Jones *v.* Anderson the Act of 1804[3] was discussed in the Supreme Court by S. B. and A. W. Foster on one side, and by Semple and Baldwin on the other. It was again held that an application under the Act of 1804, after suit brought, was not competent evidence. This case also decided that an entry by a settler before the termination of the two years allowed the warrantee after the ratification of the treaty of peace, was *ipso facto* a prevention, and gave no inception of title as against the warrantee. The doctrine of illegal entry by the settler within the two years is reasserted in Barnes *v.* Irvine (5 Watts, 497).

The controversies under the vacating warrant

[1] P. L. 1806, p. 636. [2] 4 Yeates, 328. [3] Ib. 569.

clause of the 9th section may now be referred to. As has been stated, the State Courts held that an entry by a settler, even after the 22d December, 1797, was unlawful, without having obtained a vacating or new warrant. It was so held because the Commonwealth had by the terms of the section prescribed this as the only mode of asserting her own title. Owing to ignorance, bad advice, and presumption, few settlers, after 22d December, 1797, had availed themselves of the statutory mode of acquiring title after the default of the warrantee. Still, owing to the unsettled state of the country, and the difficulty of pursuing their claims in the local courts, the warrantees generally suffered delay. A few, by reason of non-residence in the State, brought suits in the United States Court in Philadelphia, there being no Western District in Pennsylvania until the year 1819. But those who brought suits in the East found great difficulty in enforcing their judgments by execution. The spirit of resistance prevailed so sternly among the settlers, who thought the attempt to oust them from their homes was ruthless, it became difficult to serve legal process. An instance of this occurred in Beaver County, in 1808. William B. Irish, the Marshal, in attempting to deliver possession in the case of William Fulks, a settler on Little Beaver Creek, was way-

laid and fired upon, and one of his posse, a man named Hamilton, was killed.

The consequence was that the titles in Northwestern Pennsylvania remained unsettled for many years. In 1810 Mr. Smith, in the second volume of his edition of the Laws, page 205, refers to this state of affairs in these words:—

"The population and improvement of the country have been imperilled and restricted. Nineteen years have elapsed, but the dispute is still undecided; and whilst to the north and to the west of these controverted lands the country increases with industrious citizens and smiles with cultivation, here the half-finished cabin and remaining forests proclaim that the land is without a certain owner."

This state of title led to a new course of legislation in the hope of ending disputes by compromise between the warrantees and settlers. The first Act is that of 20th March, 1811,[1] "for the settlement of certain disputed titles to lands north and west of the rivers Ohio and Allegheny, and Conewango Creek."

The preamble recites that the improvement of these lands is still impeded. That the opinion is entertained that persons calling themselves the

[1] 5 Smith's L. 206.

Holland Land Company, the Population Company, and North American Land Company, and others claiming lands by warrants forfeited their titles and claims by non-performance of the condition of settlement, etc., that this title still remains in the Commonwealth, and that actual settlers have entered and claim title, and in some cases have suffered judgments in ejectment, and finally the importance of settling these disputes.

It enacts that in all cases of agreement between the original warrant-holder and settlers, and where the required settlement and improvement have been made according to the Act of 1792, the Commonwealth releases her claims. Where an actual settler has entered and made the required settlement and improvement, and has compromised with the original warrantee by receiving one hundred and fifty acres surveyed to him, or where either has purchased the right of the other, the Commonwealth ceases to have further claim, and will confirm the title. And where a settler has made an adverse actual settlement and improvement, and purchased a part of the tract to include and secure his improvement, the Commonwealth will release title on the warrantee conveying one hundred and fifty acres of the tract in consideration of the settlement. And an actual settler who has entered and within two years made the im-

provement required, but has abandoned the tract before the full time of residence has been completed, shall, on return and completing his actual settlement, be entitled to the benefits of this Act. So an actual settler who had been evicted by legal process shall be entitled to the benefit of the Act upon the warrantee releasing to him one hundred and fifty acres and allowance by survey, or if either party purchase the right of the other the Commonwealth will cease to have claim to the tract, and will ratify the title. Where no settlement has been made, but the warrantee, before the 1st June, 1814, shall agree with any person to make the settlement before that day, and will agree to release to him one hundred and fifty acres and allowance by survey, and the settlement shall be made according to the law, the Commonwealth will cease to have claim and will confirm and ratify the title. Certain other provisions were made respecting prevention patents, new warrants already taken out, granting of patents, and evidence to be produced, etc. etc. The Act ended with this proviso: That nothing should prevent the Commonwealth from asserting her right of forfeiture under the Act of 1792, where the warrantees and settlers fail to embrace the provisions of this Act.

The terms of this Act are conclusive of the prime and lasting intention of the State to provide

for the actual settlement and improvement of these wild lands.

Those parts of the Act of 1811, which would expire by limitation, were revived and continued until April 1, 1824. (See Acts February 21, 1814, March 24, 1818, March 29, 1819, April 2, 1822.[1])

Probably the most important legislation changing the condition of the warrantees and aiding the course of the settlers is found in the Act of 24th March, 1814.[2] Prior to this Act it was a presumption, from the state of the country and the Indian war, as held by the courts, that the warrantee was prevented from making the required settlement and improvement before the ratification of Wayne's treaty on the 22d December, 1795.

The Act is entitled "An Act explanatory of an Act for the sale of vacant lands within this Commonwealth," and enacts that before a warrantee for land north and west, etc., shall recover against an actual settler or his representative, he shall prove to the satisfaction of the Court and jury that he was individually and in fact prevented by the enemies of the United States from settling the land, and that within two years from the date of his warrant he did persist; and what acts of per-

[1] 6 Smith's L. 107, 380; 7 Ib. 138, 240, 598.

[2] Ib. 130.

sistence were made; and that his warrant was fairly obtained and executed. Then came a proviso which enabled him to preserve his right, and at the same time enabled the settler to obtain the one hundred and fifty acres contemplated in the compromise Act of 1811. This was a conveyance by the warrantee to the settler of one hundred and fifty acres within two years. If the settler refused to accept it, he lost the benefit of the Act of 1811. This Act was continued in force until April 1, 1824, by Act of April 2, 1822.[1]

In Bedford *v.* Shilling[2] it was decided that this Act did not extend to suits commenced by warrantees against settlers before its passage. The advantage the Act of 1814 intended to confer upon the settler received a severe shock in the case of Ross *v.* Barker,[3] which overthrew all its supposed protection; that case deciding that in certain aspects the Act would be unconstitutional, and in certain others it would be useless. Under the decision in Ross *v.* Barker its operation, if any it could have, was limited to a narrow compass.

The controversy under the 9th section of the Act of 3d April, 1792, was, however, brought substantially to an end by the Act of 3d April, 1833,[4] which dispensed with the settlement, and

[1] 7 Smith's L. 598.

[2] 4 S. & R. 401.

[3] 5 Watts, 395–6

[4] P. L. 1833, p. 129.

provided that a patent might issue to the warrantee without proof of settlement, etc. But it provided that the Act should not impair the rights of settlers already acquired, and that such patent should not be given in evidence against the settler where the title would come in question.

This Act of 1833 was the last important act of legislation upon that long drawn out litigation between warrantees and settlers. Then came the controversy in the Supreme Court itself, on the subject of new or vacating warrants.

In the case of Skeen *v.* Pearce,[1] decided in 1821 (the true name was Skeer), the Supreme Court —consisting of Tilghman, Gibson, and Duncan— decided very positively that a settler could not enter upon warranted land to make a settlement under the Act of 1792, without a vacating warrant under the 9th section. (Jones *v.* Anderson[2] and other cases were cited for this.) But a new doctrine was advanced in Campbell *v.* Galbraith.[3] In the mean time the Supreme Court had been enlarged in number, and was composed of Gibson, C. J., Rogers, Huston, Kennedy, and Ross. The fresh Judges were not so adherent to the claims of the warrantees, and, as a consequence, there was a

[1] 7 S. & R. 303. [2] 4 Yeates, 569. [3] 1 Watts, 70.

better feeling towards the claims of the settlers. This became more evident in another branch of title to be adverted to hereafter. The opinion was delivered by Kennedy, J., with a concurring opinion from Huston, J.; Ross, J., took no part, and Gibson and Rogers acquiesced on a ground stated by Gibson, C. J., in Barnes *v.* Irvine, noticed hereafter. Kennedy, J., conceded that the prior doctrine of a presumptive prevention *ipso facto*, by the entry of the settler within the time allowed to the warrantee for the making of an actual settlement was sound. But on the question whether the settler could enter without a vacating warrant after the time had elapsed for performance of the condition by the warrantee, he held that the effect of the Acts of 1794, 1802, and 1804 (already cited) rendered the new warrant unnecessary; and that the settler could lawfully enter, if the warrantee had failed to perform the condition of actual settlement within the two years after the ratification of Wayne's treaty with the Indians. This decision took place in 1832, and, as a consequence, the warrant titles being imperilled by it, a great disturbance arose. This eventuated in new suits, and in the passage of the Act of April 3, 1833 (already cited). Two cases came into the Supreme Court in October, 1835—

to wit, Barnes *v.* Irvine,[1] and Smith *v.* Collins. The former was argued by able counsel, McCalment and Thompson on one side and Banks and Pearson on the other. The opinion was delivered by Gibson, C. J., in October, 1836, in which he begins by stating the error under which he and Justice Rogers were led to acquiesce in the decision in Campbell *v.* Galbraith—viz: the omission of the last clause of the 4th section of the Act of 2d April, 1802 (in the Digest of Mr. Purdon, published in 1830). The doctrine of Campbell *v.* Galbraith was reversed, and the Court again stood upon the broad ground that the warrantee was excused by the prevention of the Indian war from making his settlement until the end of two years after the ratification of Wayne's treaty, and that the settler could not enter for the forfeiture, even after the two years had expired, without obtaining a vacating warrant.

On the argument of the case in 1835, the Judges, excepting Judge Sergeant, who came upon the bench after the decision in Campbell *v.* Galbraith, were equally divided in opinion. At his request the case was held over for his examination, he not being familiar with western land titles. In the mean time he read up, and this led

[1] 5 Watts, 497–505.

to the making of his Treatise on the Land Laws of Pennsylvania. After the discovery of the omission by Mr. Purdon of the proviso to the 4th section of the Act of 1802, Kennedy and Huston, J.J., seemed not to have insisted on their interpretation of the Acts of 1794, 1802, and 1804. The breadth of the opinion in Barnes *v.* Irvine was, however, not so important, as the Act of 1833 had dispensed with the condition of settlement on part of the warrantee. In this long controversy it is manifest the legislative mind turned toward the settlers, while the judicial mind stood on the other side, until the Legislature ended the contest by the Act of 1833.

This termination against the settlers of the controversy upon the 9th section of the Act of 3d April, 1792, as to the necessity of obtaining a vacating warrant, did not, however, quiet titles. There remained another contest, continuing for years, arising out of the application of the Statute of Limitations to the possession of the actual settlers. For a long time the Supreme Court stood firmly on the side of the warrantees, but gradually this strictness gave way; and finally, under the influence of an infusion of new blood upon that bench, the rights of the settlers were broadened and ripened into a possession that quieted the title in many remaining cases, which had not been settled at law, or by compromise.

The early doctrine was, that a settler, who enters on land which had been warranted and surveyed, or had been patented to another, being a trespasser, acquired no right under the Statute of Limitations, beyond the land actually cultivated or inclosed for twenty-one years. This was termed his *pedis possessio*, or actual possession. All the woodland, outside, was deemed at law to be in the possession of the warrantee or patentee by reason of his title. This was the *presumptive* possession of the owner of the warrant or patent. Consequently, as the land first cleared, and fenced or cultivated was small in the beginning of the twenty-one years, the statute, as thus interpreted, protected the settler to the extent only of his original improvement, which was often only a very few acres—perhaps only three or four out of a four hundred acre tract. In other words, the title by limitation was confined to the few acres only held by a *pedis possessio* in the beginning, and could not be constructively extended to the unimproved land. The case of Miller *v.* Shaw,[1] decided in 1821, seemed to settle this doctrine conclusively. Gibson, J., opened his opinion by saying, it is a well established principle that there can be no construction in favor of a wrongdoer.

[1] 7 S. & R. 129.

After this came the case of Royer *v.* Benloe, in 1823.[1] It was argued most elaborately; but the Supreme Court held it plainly came within the principle of Miller *v.* Shaw. The Court below had held that a clearing and cultivation of the land, within the defined limits of the occupant, in two parcels half a mile distant from each other, and a use of the woodland by cutting when and where it suited his convenience, protected every part of the land so designated. This was decided to be error, and the judgment below was reversed. Chief Justice Tilghman repeated the principle stated in Miller *v.* Shaw, in these words: "He who enters without title is a trespasser, and has no constructive possession, but is limited to the spot actually occupied." Yet the Chief Justice, in a few words of exception, where the owner confesses himself to be out of possession, gave rise to a doctrine of a *presumptive ouster*, which afterwards became the foundation of a great change in the doctrine of possession under the statute. One of the examples given by the Chief Justice was where an owner permits the settler to pay the whole of the taxes on the land for twenty-one years, without objection on his part.

McCall *v.* Neeley,[2] in 1834, gave occasion for

[1] 10 S. & R. 303.

[2] 3 Watts, 69.

the application of this exception; and what is remarkable, in an opinion by Chief Justice Gibson, who before and afterwards, gave strong utterance to the old doctrine. In the beginning of the opinion he gave the fresh idea logic and strength. However, the Court had increased from three to five Judges, at least two of whom had been reared in a different school. The plaintiff was a patentee, and the defendant a settler on the whole tract, who continued in possession for twenty-one years, paying the taxes on the whole land. The Chief Justice, after announcing the former doctrine in clear terms, then turned to the doctrine of disseisin at common law, and discussing it awhile with not very decisive result, said: "The principle I have thus attempted to enforce may seem inconsistent with the doctrine of Miller *v.* Shaw (7 S. & R. 129); but it is to be observed that the Court had in view the case of an intruder claiming no more than the rights of a settler, which it has been shown give no possession of anything but the land immediately occupied; and this much it is proper to say, in order to restrain the generality of expressions used, more particularly by myself." And, indeed, this apology seemed to be necessary, for in a few moments he started afresh thus: "But may not one who entered originally as a settler or squatter change the char-

acter of his disseisin by exercising acts of ownership under the title of the dissésee, and thus become a disseisor by color of title?" He then refers to the *dictum* of Chief Justice Tilghman in Royer *v.* Benloe (10 S. & R.), repeated by Justice Rogers in Read *v.* Goodyear (17 S. & R.), that payment of taxes raises a presumption of ouster of the whole tract; and of acquiescence of the owner as an acknowledgment of ouster. Yet the same reasoning had been used before in many cases without effect. Indeed, the payment of taxes by the settler for the whole tract was a necessary incident of the law itself, which subjected the tenant in possession to the payment of all the taxes. And what makes the reasoning in McCall *v.* Neely more remarkable is, that at the same term, September, 1834, in Sweeny *v.* McCullough[1] the doctrine of Miller and Shaw, and Royer and Benloe, was reasserted by Justice Rogers with renewed tenacity. He even says, that after these two solemn decisions the question should be at rest. Yet to those who understand these settlement cases the only difference between McCall *v.* Neely and Sweeny *v.* McCullough is the proof of the payment of the taxes in the former, while the presumption of the payment of them arises in the

[1] 3 Watts, 345.

latter quite as conclusively by operation of law, from continued possession, and the legal mode of assessment and taxation. However, this nice distinction threw the first ray of light upon the titles of these benighted settlers, and counsel soon began to improve it.

The next attempt to hold title by limitation to the whole of the tract arose in the case of Ross *v.* Barker.[1] There was no proof of an early definition of boundary by the settler, or proof of the actual payment of taxes by him, and the Court confined the operation of the statute to eight acres held by *pedis possessio* for twenty-one years. This was a very noted case, the claim of the settler being to four hundred acres, embracing parts of the two warrants of Daniel Broadhead, heretofore referred to, as issued on the 3d of April, 1792, for land opposite to the great falls of Big Beaver Creek; the same land on which the town of Beaver Falls, in part, stands. But the opinion of Chief Justice Gibson gave another ray of hope in the effect he seemed to attribute to an *official* survey by a settler under the Act of 1792. This intimation was taken hold of by the writer in the case of Lawrence *v.* Hunter,[2] and resulted in the reversal of the judgment of the

[1] 5 Watts, 391. [2] 9 Ib. 64.

Court below, and establishment of the doctrine that an *official survey* for a settler under the Act of 1792 gave a color of title to the land within the survey, and thereby title to the whole survey under the Statute of Limitations.[1]

In the mean time, however, Lawrence *v.* Hunter had received an accession of strength from the reannouncement of the doctrine of McCall *v.* Neely, in the case of Criswell *v.* Altemus,[2] on the east side of the Allegheny River. The doctrine repeated in it can be best stated in the language of Kennedy, J., who delivered the opinion. After referring to some of the cases I have noticed, he says: "Though I cannot recur to any case where the question has been raised directly and adjudicated by this Court in the affirmative; nor am I certain that any such has occurred; yet such has been the settled opinion in it for some time back, that where an intruder enters without color of title into, and settles with his family upon, an unseated tract of land belonging to another—who claims it under warrant and survey, either with

[1] This case was reached on Saturday afternoon, and the Court declined to hear it, but said it would be taken on written arguments. Printed paper-books were then not in use. Mr. Forward was willing, the writer being a young lawyer. However, my argument, found at length in the report, prevailed.

[2] 7 Watts, 565.

or without a patent from the Commonwealth—and having settled upon, claims it as his own, by exercising acts of ownership over it, from year to year, in putting up buildings upon it, clearing and fencing more or less of it, and using the whole of it according to the custom of the country—that is, the clear land as arable, or meadow, or pasture, and the woodland for obtaining from it timber as often as the settler shall have occasion for it to answer his purpose—also, returning the whole of it to the assessors as his own, and paying taxes thereon, when assessed, for a period of twenty-one years, will be sufficient, under the operation of the Statute of Limitations, to protect him in possession of the whole of the tract or survey, including the woodland as well as the improved parts of it."

It is unnecessary to pursue the subject of title by limitation further. Criswell *v.* Altemus, and Lawrence *v.* Hunter became the foundation of other cases in which the rights of the settlers were supported after an adverse possession of twenty-one years. The general doctrine of the statute does not fall within the scope of the design of the writer, though many cases in after years arose, and many interesting discussions took place, such as occurred in the case of Hole *v.* Rittenhouse, wherein the contest between the late

Chief Justice Black and his colleague, Justice Lewis, took a form which made the discussion State-wide in its interest.

It would extend this sketch too far to recount the great number and variety of decisions made under the Act of 3d April, 1792. Besides, many are so well stated by Charles E. Smith, Esq., down to the year 1810, in his admirable note in the second volume of his Laws, and so many are collected and arranged under various heads by Mr. Wharton, in his Digest of Pennsylvania Decisions, the labor is unnecessary.

Having accomplished the work of sketching pretty fully the history of the lands in the north-western part of the State, acquired under the Indian purchases of 1784, 1785, and 1789, at Fort Stanwix, Fort McIntosh, and Fort Harmar, and the history of the great questions which arose under the legislation applicable to these lands, further labor is unnecessary. In this work I hope I have rescued from oblivion many matters of great interest, and exhibited the trials and sufferings of those who gave their toil, and some their lives, in the development and improvement of this interesting and important section of the State.

Some matters of interest will be found in the Appendix.

APPENDIX.

ADDRESS OF DANIEL AGNEW AT THE DEDICATION OF THE NEW COURT-HOUSE OF BEAVER, PENN'A.[1]

Ladies and Gentlemen: There are occasions when the celebration of a public event, by appropriate ceremonies, is instructive to those whom it concerns, marking their progress as a people in refinement and culture; and this one is eminently so. What can be more deeply interesting to American freemen than the dedication of a temple to the service of that great and ruling principle, upon which hang all their rights, their interests, and their happiness?

Law! Grand, immutable, inscrutable energy! Springing from the unfathomed depths of the Great Jehovah, permeating all his works, and carrying blessings everywhere, it is the type and the very basis of human institutions. Deprived

[1] This Address is given because its contents are germane to the subjects of this Treatise.

of human law, what would be the condition of man? Without it might would be right, fraud success, and violence redress. And without law what is justice? A form without life, a voice dying on the air. To give efficacy to this great regulating, refining, enduring principle, you have assembled this day to dedicate this beautiful structure to the service of the Ministry of Justice. It is a building worthy of its projectors, creditable to those who planned and built it, and a testimonial of honor to the people who gave their means to erect it. Long may it stand, a work of high art, a monument of liberality, and a tower of safety for the rights of the people.

This house marks an epoch in the history of the county. As we survey its surface we behold the evidences of improvement in the physical and mental condition of its inhabitants, and mark the progress made since its organization. If we recur to the first decade of the century, we discover a people in a rude state of civilization, living in round log cabins, made with the axe and the auger—drawing a scanty support from the earth by the labor of their hands, and possessing few comforts and no luxuries—simple in garbs woven by their own hands, and colored from the barks of the forest. They were without much education, uncouth in speech, and unpolished in man-

ners. Yet, to their praise be it spoken, they were, notwithstanding these accidents of situation, virtuous, sincere, hospitable, courageous, and honest; having strong religious convictions, a just sense of right and wrong, and full of patriotic fire. Such were the early settlers of Beaver County—not barbarous, but made primitive by the wilderness around them. Their type was the sun rising in cloud and fog, and half obscured. Now, looking abroad, as when the orb of day has risen to meridian splendor, casting effulgence on every hand, we take in a people abounding in wealth and comfort, enjoying the advantages of education in manners, morals, learning, and art; and gaining a bountiful supply for all earthly need, from trades, professions, and avocations unknown to their simple ancestors. No longer confined to the scanty avails of manual efforts, they reach far into the realms of thought, drawing forth the rich fruits of all the intellectual forces. Now schools, academies, and colleges stand thickly on the soil; great mills and manufactories utilize its products; beautiful dwellings, and graceful and grand creations of architecture adorn and dignify the rich domain; the wolf, the bear, or the catamount, once contesting the title of the settler to the forest around him, no longer alarms with his howl or his cry, while the ox, the horse, and the sheep

now fill their places; and the forest itself has given way to green pastures, and fields of waving grain and bending corn. Science and art, too, have added their grand achievements in the telegraph and the railroad, conveying instant thought and the persons and products of men to distant climes. Even now we listen to the sound of far-off voices and of music, brought by the telephone over hill and dale, and mountain and valley, and across the rivers that run to the sea. The sun, too, has turned portrait painter, and takes your likeness in a few seconds.

But the changes of nature and in the circumstances of the people are not the only mutations we see. Law is the central thought of this dedication, and the change in the subjects, character, and forms of litigation is not less remarkable. In the earliest times these were of the simplest kinds. Trespasses on lands or cattle, or the humble personal effects of the settler and the small tradesman; breaches of petty contracts for work or of sale, and contracts for lands in their most simple state; these were the common subjects of conflict, and brought into use the simplest forms of actions—trespass, and on the case, replevin, trover, assumpsit, covenant, and in ejectment. Let me instance a suit brought at the first term, February, 1804. Thomas Hartshorne

v. Thomas Sprott, Esq. Replevin for one sow and ten pigs, marked with a crop off the right ear and half a crop out of the under side of the left ear, of the value of $10. Verdict for the defendant—a new trial, and judgment for the plaintiff for $6 damages—costs, $35.87. The squire paid well for his pork. Beyond these simple forms of action the rural lawyer rarely looked. Perhaps he had read of others in black letter books, but they were useless mysteries.

Now mark the contrast! The land is filled with new kinds of business, new agencies for their execution, new forms of art, new products of labor, new machines, new wants, new supplies, and novelties of every sort. Even new beings exist—artificial persons, creations of the law—these have arisen with new purposes and new methods of proceeding. Corporations lie thickly about us. Some assist at birth and others at death; some take care of the living, and others of the effects of the dead. They take charge of our property and persons, insure them against danger and death, transport them from place to place, educate, facilitate, and employ. Higher types of hand labor and of machine work, and grander modes of intercourse now fill the earth. Commerce swells the avenues of business with new subjects of trade, new forms of contracts, and new agencies of per-

formance. These, and others too numerous to mention, have brought new laws and new modes of proceeding as various as shells on the seashore; and new remedies for wrongs have multiplied like the locusts that swarm over the plains.

Now bills for specific performance, bills for injunction, bills for account, and bills without count; bills of discovery, of revivor and interpleader, writs of mandamus, quo warranto, of error coram vobis et nobis, and writs that few understand; actions for death and negligence against cities and towns, corporations and individuals. Complaints of all kinds, more than one can state, now thicken around the crowded brain of the lawyer until he seeks refuge in specialties, and we are introduced to the corporation lawyer, the insurance lawyer, the admiralty, the land and real estate, the orphans' court and quarter sessions lawyer; the proctor, the solicitor and the counselor. They swarm from the hive like bees, and the ladies will be glad to know that, like bees, they take their queens.

But we are reminded that the law must have its place of enforcement. A court is said to be a place where justice is judicially administered. Take care of the pronunciation of this definition, lest "in" unite with "justice," and the caviller say a truth is told. The location of the seat of jus-

tice at Beaver brings up memories of local history, some of which operated on the minds of the men of 1800 in placing it here. On this beautiful plain, in times long gone by—more than a century and a quarter ago—the mercurial Frenchman found a lodging among the wild men of the forest, unsuited to Parisian taste, yet made fit by his loyalty to his king. In front flows the Ohio—the Frenchman's "La Belle Riviere," and the Indian's "Clear Water." Above, the Big Beaver rolls down over miles of rocky falls. Far back, before civilization had planted her footsteps on the virgin soil, it took its name, by translation from the Indian tongue, from the useful animal inhabiting its waters. The town took its name from the stream, and the county its from both.

The earliest mention of the name of the stream I have noticed is found in Conrad Weiser's journal of his journey to Logstown. Of course it had a previous existence. Leaving Heidelberg Township, Berks County, on the 11th of August, 1748, Weiser crossed the "Allegheny Hills," coming on the 22d to the "Clearfields," now in Clearfield County. On the 25th he crossed the "Kiskeminetoes," coming to the Ohio the same day. The Allegheny was then so called, and is thus named in the treaties with the Indians at Fort Stanwix in 1768 and 1784, both describing the

boundary of the purchases as striking the Ohio at the Indian village of Kittanning. On the 30th of August Weiser came to "Beaver Creek," and finally reached Logstown, on the north bank of the Ohio, below the present town of Economy. The "Little Beaver," twelve miles below the "Big," is mentioned by Washington in his journal of his mission to the French Commandant at Fort Le Bœuf and Venango in November, 1753. On his arrival at Logstown he says the "Half King was at his hunting cabin on Little Beaver, and was sent for there."

A most interesting account of this region is given by Christian Frederick Post, a German and Moravian preacher, twice sent out from Philadelphia, in 1758, to the Indians living west of Fort Du Quesne. In his second journal, November 16, 1758, he says: "We went down a long valley to Beaver Creek, through old Kushkushing, a large spot of land, about three miles long. Kushkushing was a Delaware town, near the junction of the Shenango and Mahoning, which form the Big Beaver, and on the west side of the Beaver." In Weiser's journal the town is called "Caskaskie." Here lived the famous chief of the "Turtle Tribe" of the Delawares, known as "King Beaver," or "The Beaver;" and here we meet the origin of the present name of the stream, it being evidently

a translation of the Indian name. Both men and tribes were distinguished by the names of favorite animals. In the Irrequois Confederacy, or Five Nations, there were eight tribes of each nation, known as the Wolf, Bear, *Beaver*, Turtle, Deer, Snipe, Heron, and Hawk. The Delawares were not of the confederacy, but their tribes were distinguished in a similar manner. I have not discovered the Delaware name for "Beaver," but among the Irrequois it was "Non-ga-nee-ar-goh." "King Beaver," or "The Beaver," is frequently mentioned, and his speeches preserved in the conferences with the Indians—in that of George Croghan, deputy to Sir William Johnston, His Majesty's Superintendent of Indian Affairs, at Fort Pitt, in July, 1759; of Brigadier-General Stanwix, at Fort Pitt, in October, 1759; and in the journal of Colonel Henry Boquet of his expedition in 1764 from Fort Pitt to the Indians westward. At the conference, November 10th, with the Turkey and Turtle tribes of the Delawares, "King Beaver" is set down as the "chief of the Turkey tribe, with twenty warriors." This proves that his name, "Beaver," was personal and not tribal, being taken, probably, from the stream on which he lived, as before mentioned. I have taken these facts from an article on the origin of

the name of Beaver County, written by myself, therefore it will not be deemed plagiarism.

The town of Beaver is emphatically a child of the State, and its large lots (300 by 120 feet) and wide streets (100 feet) bear no impress of private economy. It was laid out under authority of the Act of 28th September, 1791, by Daniel Leet, whose survey was adopted and ratified by the Act of 6th March, 1793, and covers the site of the old French and Indian town, upon which Fort McIntosh was built. Beaver County was erected by the Act of 12th March, 1800. The Act recites the reservation contained in the Act of 13th of March, 1783—"to the use of the State of 3000 acres on both sides of the mouth of Big Beaver Creek, including Fort McIntosh." The out-lots of Beaver, and the grant of 500 acres for the use of an academy, were also laid out upon this reservation. A similar reservation of 3000 acres was made at the junction of the Allegheny with the Ohio, on which the town of Allegheny and a common pasture for the lot owners of 100 acres (the present parks) and the out-lots, were surveyed under the Act of 11th September, 1787.

Fort McIntosh was built in 1778, and from it General McIntosh marched with 1000 men against the Sandusky towns, and built Fort Laurens on the Tuscarawas. Some of the lines of Fort McIn-

tosh were visible when I came to Beaver in 1829. One of these lines and the places of the terminal bastions may yet be discerned upon close observation. It was a strong stockade, and mounted one six-pounder. A covered way descended the face of the hill to the bottom, where a well was said to be dug, water not being had on the plain short of the hill, a half a mile in the rear. Fort McIntosh was the scene of the last treaty with the Indians, which extinguished their title to the soil of Pennsylvania. The treaties of 1768 and 1784 at Fort Stanwix were made with the chiefs of the six Nations — the Mohawks, Oneydas, Onondagoes, Senecas, Tuscaroras, and Cayugas. These treaties were made after the Tuscaroras had joined the Five Nations. The treaty of Fort McIntosh was made in January, 1785, with the Wyandotts and Delawares, the last claimants of title, and ran in the words of the description of the boundary line between the purchases of 1768 and 1784. In anticipation of the extinction of the Indian title, the State had, by the Act of 1783, laid off the country west of the Allegheny and north of the Ohio into two grand sections, intended as donations to the Revolutionary soldiers of the Pennsylvania Line, and for the redemption of the certificates of depreciation from the continental scale given to them for their pay. The Donation

Lands lay north of a due west line from Mogulbughiton Creek, above Kittanning, to the Ohio State boundary. The Depreciation Land, as it was called, lay south of this line, which ran between five and six miles south of the present town of New Castle.[1]

These historical reminiscences are not foreign to my theme, for they are connected with two germane subjects—the litigation attending the land titles in the county, and the location of the county seat. The Depreciation Lands were ordered to be sold at the "Coffee-house," in Philadelphia, but bringing very low prices, the sales were suspended. Of the Donation Lands many of the tracts were undrawn, and a large tract of country, called the "Struck District," was withdrawn from the wheel as unfit, on account of its broken and hilly character. A part of the "Struck District" lay in Butler County. Afterwards came the Act of 3d April, 1792, which opened to settlement and survey the unappropriated lands north of the Ohio, and west of the Allegheny River and Conewango Creek. It was a most unfortunate law for the State. It provided two modes of appropriation—one by warrant and survey, the other by actual settlement and survey—the 9th

[1] More nearly eight miles.

section making void and subject to new warrants all warrants under which an actual settlement should not be made within two years after the original warrant. Under this section sprang up that once famous contest in the Courts of the State and of the United States, whether the warrants were void, or voidable only by non-fulfilment of the conditions of settlement; and its kindred question, whether the Indian war excused or only suspended the performance of the condition. At the passage of the Act of 1792 this region was uninhabited, by reason of the Indian war, excepting in a very few instances of settlement near the rivers. As a consequence, capitalists, residing chiefly in Philadelphia, immediately availed themselves of the warrant mode of acquiring title, appropriating large tracts of country. The warrants of the Pennsylvania Population Company, organized by John Nicholson, are generally dated on the 14th day of December, 1792, and covered a large part of the territory of Beaver County, north of the Ohio. The Indians being defeated by General Wayne at the battle of Maumee, on the 20th of August, 1794, he concluded a treaty of peace with them on the 3d of August, 1795, which was ratified by the Senate, on the 22d of December following. This was the signal for actual settlements under the Act of 1792, and in

the spring of 1796 came that great wave of settlers which quickly covered the lands of the county. Now the contest began. The settlers, believing the warrants forfeited by non-settlement under the warrants within two years, sat down upon the surveyed tracts, in disregard of the titles of the warrantees. A warfare followed, which for nearly forty years distracted this unhappy region, and delayed its improvement. This is not the time and place to trace in a brief address the history of that great controversy, the conflict of decisions, and the compromise legislation resorted to to compose the strife; yet the subject is well worthy of an abler pen, and teems with interesting incidents. It was in the closing years of this controversy that my own knowledge of land law began.

On the dissolution of the Pennsylvania Population Company, in or about the year 1812, its lands in this county passed, in 1813, into the hands, chiefly, of William Griffith, of New Jersey, and John B. Wallace, of Philadelphia. Their adventure failed, probably by reason of the universal depression following the war of 1812. A partition was made, Mr. Griffith taking the land contracts, including the compromises, which were all on time, and Mr. Wallace the unsold parts generally. Mr. Griffith's portion afterwards passed

into the hands of assignees or trustees, and Mr. Wallace in December, 1818, conveyed the remainder of his portion to the Farmers and Mechanics' Bank of Philadelphia in payment or security for debt. These lands of the bank lay for years without attention. In 1832 the bank, fearing the consequence of delay, sent out its agent and attorney, William Grimshaw, the well-known compiler of several school-books and minor histories. He was a man of imposing appearance, tall, severe and high-tempered—a man well calculated to impress the settlers with fear of the law's tangled net—not personal fear, for few knew the feeling. He was active and efficient, compromising with some and suing others. A large crop of ejectments followed, some of which found their way to the Supreme Court with various fortunes. About ten years later the Messrs. Huidekoper, of Meadville, having purchased the interest of the assignees of William Griffith,[1] compromised on fair terms, and to their credit, be it said, brought few or no suits. But time will not allow me to pursue this subject. It would be interesting to a Philadelphian, familiar with the names of the families of 1792, to run over the names of the warrantees of that year. To this day, as I walk the streets

[1] They were assignees of William and Maurice Wurts, of Philadelphia, who claimed under William Griffith.

of that city, I read their familiar names on the door-plates of their houses. By compromises, by trials, and by the operation of the Statute of Limitations, under a change of judicial interpretation, the titles of this county became settled and an era of improvement began.

It is probably not well known to the Bar of Beaver County, as few date their admission beyond 1850, that the variety of the original land titles in Beaver County exceeds that of any other county in the State. On the south side of the Ohio we have all the various titles, under-warrants, improvements, and licenses, both of the proprietary and the State governments, applicable to the purchase under the treaty of 1768, to which may be added Virginia entries by settlement under the "corn" law of that State of 1778, and by special grants, recognized by Pennsylvania in her settlement of boundaries with Virginia. One of these titles by Virginia entry is to be found at and below the mouth of Sawmill Run, opposite Pittsburgh, the property being owned in my younger days by West Elliott. General Washington was the owner of titles, under Virginia, to lands lying chiefly in Washington County. On the north side of the Ohio we have the titles under the Donation and Depreciation surveys, with some marked peculiarities,

and titles under the Act of 1792, by warrant and survey, and actual settlement and survey, involving characteristics still more marked, including the doctrines of abandonment and vacating warrants. These varying elements have also given characteristics to the tax titles of this county, differing in some respects from those in other parts of the State. The difference in the kind of warrants on the north and south side of the Ohio and in the modes of survey on both sides, often conflicting with each other, made the land titles of the county intricate and difficult.

Returning now to the more specific matter of the place selected for the administration of law, I may recur to the Act of 1800 fixing the county seat and the reasons therefor. A county is one of the great municipal divisions of the State, essential to the convenient and efficient administration of the government. The first inquiry of a calm and judicious mind is, Where is the true centre of convenience, interest, population, and territory—not one of these, but all? It was quite natural that the legislators of that day would remember the town which the State herself had laid out with generous squares, and liberal avenues, and in which she had reserved eight squares for "public uses"—uses which she reserved to herself to appoint. It was on the site of the old French

town, and of Fort McIntosh, to which a fine military road had been laid from Fort Pitt by Gen. Broadhead, a road on the south of the river, known to this day as "Broadheads," reaching the Ohio and coming down the hill opposite Beaver. The location of the town was most favorable. Beaver stands on a beautiful, healthy, and commanding plateau, elevated about 130 feet above the river, and containing about 1000 acres, fronting upon the Ohio to the southeast, and just below the Big Beaver. Of this plain one whom many of you knew, a son of one of Beaver's earliest and most eminent lawyers, and a child of genius, has beautifully written. Here he was born, here his eyes rested for the last time on the fair scene he depicted, when running a race with death, to the balm of California skies. But death outran him, and he died in Sacramento in January, 1870. His remains now lie here where he wished them to rest. Allow me a single extract from this description:—

"The skies which overhang the hill-guarded plain are peculiarly rich and soft—are in unison with the scenery which is boldly beautiful rather than sublime. It seems as if, in carving the outline of my native village, God had cut an exquisite brooch to nestle on the bosom of nature. Here dear ones sleep in a tasteful cemetery; among them my hon-

ored father, and the mother, whose memory has, for many years, been to me a living passion. I often think, that when my rambling life is over, if it please God, I would love to sleep, until the voice of Jesus shall quicken me into the full immortality of redemption, where the brawl of my native river shall sweetly and sadly resound round my grave. These hills shall lovingly guard, and these skies overshadow many generations after I and mine shall dwell together in the dust. Then shall they be fused and furled in fire—the time of the end shall have come. Happy they who shall stand up in the lot of childlike believers in Jesus! Something whispers, *Jam claudite rivos.*"

These were among the last brilliant utterances of the Rev. Franklin Moore, D.D., in his flight ere death caught up, before he had crossed the continent.[1] But the beauties of the plain and the memories attending it were not the substantial reasons for fixing the seat of justice here. It had centrality of territory, population, convenience, and interest. Beaver stood on the bank of the great river of the West. Entering the county on the southeast at the mouth of the Big Sewickly, the Ohio ran northwest to the mouth of the Big Beaver, then turning in front of the town it ran a little south of

[1] Rev. Franklin Moore, D.D., filled many leading charges, including Wheeling, Washington, Uniontown, Harrisburg, Pottsville, and Philadelphia. In the last from 1862 to 1869.

west to the Ohio State line. The Big Beaver coming in from the north, and bearing onward the waters of the Mahoning, Shenango, Neshannock, Slipperyrock, Connoquennessing, Brush Creek, Hickory Creek, Brady's Run, and minor streams, concentrated the valleys of all these water courses, like the radii of a circle, on the Ohio at the mouth of Big Beaver. So Raccoon entering the county at White's Mill on the south ran north nearly midway, entering the Ohio just below the Beaver plain. Thus nature had planted this fine plateau right at the centre of four great valleys, on the north, east, south, and west. These valleys and their corresponding ridges constitute the great channels of travel, all centring here. These again are fed by the smaller valleys and ridges leading into them—the Six Mile Run, Four Mile Run, Two Mile Run, Dutchman's Run, Crow's Run, Tevebaugh, entering the Ohio on the north side, and Logstown Run, and various streams down to Mill Creek on the south side; while Raccoon bore to its mouth the waters of the Big and Little Travis, the Service, and other streams. Thus stood Beaver at this natural centre of travel, and the men of 1800 chose the only true centre of convenience, population, and territory. It was no leap in the dark, but the unbiased judgment of men consulting the public interest. They knew

that the natural course of travel is along the valleys, and upon the ridges, such as the Ohioville, Achortown, Broadhead and Frankfort roads, and that public thoroughfares do not seek to cross hills and dales, in ups and downs, like the teeth of a saw, at the expense of horse flesh, vehicles, and taxes. These reasons, self-evident then, have never changed, because nature remains the same, and even railroads follow the same law of travel.

The county was organized in 1803, under the Act of 2d of April. The Commissioners erected the public buildings on two of the reserved squares, the court-house on that now occupied by this building, and the jail on the next adjacent, on the same side of Third Street. The first Court was held in February, 1804, in the house of Abner Lacock, on the lot lately owned by John Clark. The jail being first built, the Court was held in the second story of it until the old court-house was completed in 1810. That building was enlarged and improved in 1846, the wings having been rebuilt previously—the eastern wing in 1840, and the western afterward.

A new court-house had been sorely needed for years. Not only had the old one become unsuitable, unsafe, unhealthy and uncomfortable, but the division of the former offices among a greater number of persons, and the creation of new offices,

and the accumulation of records, papers, and record books, the increase of population, and vast change in the subjects and character of litigation heretofore described, and other causes, all rendered a new building adapted to the wants of the present day an absolute necessity.

Here let me probe a tender spot, which like a wound needs it. I mean the inexcusable weakness of architects who sacrifice the *purpose* of a building to architectural effect. This is especially true in court-rooms. I speak from experience, having presided in many. I have had to place the witness at the end of the bench, and cluster the jury and counsel around him, and thus to put justice in a corner. The architect, big with grand conceptions and holding before his eyes some ideal of genius, reaches to fame through lofty heights and groined arches, whose grand proportions return the sounds of the voice in rumblings and echoes, mixed with the original tones, destroying their distinctness, to the loss of sense and to the prejudice of public interest. The purpose of a court-room is the administration of justice, but how can justice be administered by men architecturally deaf? Anything impairing hearing is an absolute wrong to justice. Women and low-voiced men are rarely heard in such a room, and their testimony must be repeated by

counsel, thus endangering accuracy and encouraging a vicious habit of repetition when not necessary, but used by counsel for effect on the jury. Human tribunals are imperfect at the best, yet how much worse it is when the access to justice is cut off by barring out distinctness of sound! The loss of a monosyllable will destroy the truth of a statement. See the consequence in a trial for life and death. The only real success in a court-room known to me, was the result of an accident. The new Supreme Court room at Harrisburg is built alongside the Land Office, whose low height of ceiling regulated that of the new court-room. As a consequence, hearing is good. I would except also the new Supreme Court room in Philadelphia, which is also good.

At the first court held in February, 1804, the Hon. Jesse Moore presided. He was the President Judge of the sixth circuit, composed of the counties of Beaver, Butler, Crawford, Mercer, and Erie. His associates were Abner Lacock, John H. Reddick, and Joseph Caldwell. Abner Lacock resigned, and David Drennan was appointed, and took his seat on the 5th of February, 1805. On the death of Judge Caldwell, his vacancy was not filled, the number of associates, in the mean time, having been limited by law to two. John H. Reddick and David Drennan continued together until

1830, when Judge Reddick died, and Thomas Henry was commissioned May 19, 1830, by Governor Wolf. Judge Drennan died in 1831, and on the 19th of August the Governor commissioned Joseph Hemphill.

In 1806 Beaver County was transferred from the 6th to the 5th circuit, and Samuel Roberts became the President Judge of this county as part of his district. He was the author of the Digest of the English Statutes in force in Pennsylvania. On his death in 1820, he was succeeded by William Wilkins, his commission dated on the 18th of December. On the appointment of Judge Wilkins to the District Court of the United States, Charles Shaler succeeded him as President Judge of the 5th District. He sat in Beaver until the formation of the 17th District, by the Act of 1st April, 1831, composed of the counties of Beaver, Butler, and Mercer. John Bredin, of Butler, was appointed President Judge of the new district, and continued to preside until his death, on or about the 22d of May, 1851. He was followed by myself, appointed in July, 1851, elected in the following October, and re-elected in October, 1861. I continued until December, 1863, when I became an Associate Justice of the Supreme Court. Judge L. L. McGuffin followed, then B. B. Chamberlin; after him A. W. Acheson, followed by Henry Hice, Beaver

County having in the mean time gone into the 27th District, composed of Beaver and Washington, and is now a separate district, numbered the 36th.

At the first court in this county, in Feb. 1804, the following gentlemen, attorneys in the fifth circuit, were admitted to practice in Beaver, viz:

Alexander Addison, Thomas Collins, Steele Semple, A. W. Foster, John B. Gibson, Samson S. King, Obediah Jennings, William Wilkins, Henry Haslet, James Allison, John Simonson, David Redick, Parker Campbell, David Hays, C. S. Sample, Henry Baldwin, Thomas G. Johnston, Isaac Kerr, James Mountain, Robert Moore, William Ayres, and William Larwill. Among these names will be recognized some of the most eminent men in Western Pennsylvania, at a time when the Bar of the fifth circuit was unsurpassed by any Bar in the State. The only name I miss from this roll is that of James Ross,[1] the leader of the Bar at that early day, unrivalled for learning, polish, and legal erudition.

Of those who located in Beaver, James Allison and Robert Moore were among the most eminent, both being men of learning and ability. John Bannister Gibson, afterwards the great Chief Justice, remained but a year and a half, leaving the county young, and before he had achieved reputation.

[1] Also John Woods.

When I came from Pittsburgh to this county in 1829, the resident lawyers were James Allison, Robert Moore, John R. Shannon, William B. Clark, and Sylvester Dunham. The court was frequented, however, by eminent lawyers—Walter Forward, W. W. Fetterman, Henry M. Watts, and William Wilkins. N. P. Fetterman, a younger brother of W. W. Fetterman, did not come until 1832. The most regular practitioner from abroad was Isaac Leet, of Washington.

Here allow me to correct an error in the county history of James Patterson. I did not study law with Robert Moore, but with Henry Baldwin and W. W. Fetterman. Mr. Baldwin was afterwards a Judge of the Supreme Court of the United States, not of this State, as set down. He was an extraordinary man, highly endowed, both physically and intellectually. His voice was of remarkable strength, and led me to make my first observation upon the quality of voices. On the 4th of July, 1828, in the Presidential contest between Mr. Adams and General Jackson, he delivered, in favor of Jackson—whom he supported with great ardor—an elaborate address (having copied it, I attest the labor). The meeting took place in the rear of the James S. Stevenson property, now occupied by the Pittsburgh, Fort Wayne, and Chicago Railroad Company, on Penn

Street. The crowd was immense, and I stood upon the very verge, so distant that, though I heard the thunder of Baldwin's voice, I distinguished but little he said. But when Judge Wilkins spoke, his voice, with scarcely a tithe of the power, travelled over the crowd in silvery tones, so clear, so distinct, and so musical, not a word escaped me.

Of the Beaver County lawyers, Robert Moore died on the 14th of January, 1831. At the following April term, Judge Shaler, on leaving the bench, delivered a beautiful and just tribute to his memory.

James Allison died on the 17th of June, 1854; his son, William, a most promising lawyer, having died before him, on the 23d of July, 1844.

John R. Shannon died in February, 1860. Sylvester Dunham had left the bar many years ago. He is dead, but the time of his death is unknown to me. William B. Clark is yet alive, living on the Pennsylvania Railroad, three or four miles out from Pittsburgh.

The first Prothonotary of the county was David Johnston; the first Sheriff was William Henry, not Thomas, as published lately.

The first suit brought at February term, 1804, was an action for slander, by William Fulks. I mention this because he was reported to have

been the first permanent settler north of the Ohio in 1792. He was one of the few hardy men who braved the Indians, and settled in now Ohio Township, between what was known as the Salem meeting-house and the Little Beaver. With his settlement is connected a memorable occurrence. Suits were brought against many of the settlers in the United States Court, at Philadelphia, and judgments by default pretty generally taken. Judgment went against Fulks, and the Marshal, W. B. Irish, of Pittsburgh, in 1808, came with a posse to dispossess him. When approaching his land the Marshal and his men were waylaid and fired upon, a bullet intended for Irish killing Hamilton, a settler, who had compromised, and was accompanying the Marshal by request. It is said by some the bullet was intended for Ennion Williams, agent of the Pennsylvania Population Company.

Time would fail to recount the many memories and the interesting incidents of the early settlements, and now, in closing, let me invite your attention to one more thought, the last, but most important—I mean the debt man owes to law. We are a peaceful, prosperous, and happy people. After the bounties showered down upon us by a kind Providence, to this great principle, more

than to all others, do we owe our choicest blessings.

The air we breathe is about us, pressing us on all sides, yet we perceive it not. It is yielding, soothing, sustaining; whispering to us in Æolian music, and breathing upon us its cooling balm. Without it man lies gasping, dying. It is forever with us, and yet we forget its presence, even while we inhale it. But this vast empire of ether, which upholds, maintains, and blesses human life, is the most true and beautiful type of law. The silent and unperceived and gentle influence of law surrounds, preserves, and protects man, every moment and hour of his life.

It is only in the enforcement of law it is seen and its influence felt. Here, in this place dedicated to its service—a temple reared to Justice—it becomes visible, and its energy is manifested. Like the copper vase in the Arabian tale, dragged by the fisherman's net from the sea, this hall contains the hidden spirit of its mighty power. When the vase was opened, a genius came forth, at first of thin and vapory form, but rising and gathering it opened wider and rose higher until, towering over land and sea, his awful form brought dread upon all beneath. Thus, when the portal of justice is opened, though by feeble hands, law spoken in the weakness of human breath, issuing

from these walls, and taking the form and attribute of judgment, spreads itself throughout the land, among the thousands who inhabit it, visiting every habitation and every person, and carrying safety and protection everywhere. It is to the due administration of law, therefore, we must look for its most just and beneficent results.

Cherish, then, my friends, those who administer it in sincerity and truth, though unpalatable and therefore unpopular their judgment may be. Strengthen their hands for their good work, remembering that when injury reaches them you suffer. Give them your countenance and cordial support, for where virtue flourishes good government reigns.

REPORT OF GENERAL WM. IRVINE, AGENT OF THE STATE ON THE DONATION LANDS.[1]

This report accompanied a letter to his Excellency, John Dickinson, Esq., dated Carlisle, Aug. 17, 1785.

Notes taken and observations made [by] the agent appointed to explore the tract of country presented by the State to the late troops of the Penna. line of the American army.

[1] 11 Penna. Arch. 513.

In exploring the donation land, I began on the line run by Mr. McLane, between that and the tract appropriated for redeeming depreciation certificates, which he ascertained by a due north line to be near thirty miles from Fort Pitt, and by the common computation along the path leading from Fort Pitt to Venango, on the mouth of French Creek, which some affirm was actually measured by the French when they possessed that country, I found it forty miles. East of this path, along Mr. McLane's line, for five or six miles, the land is pretty level, well watered with small springs, and of tolerable quality; but from thence due east to the Allegheny River, which is about twenty-five miles due east, there is no land worth mentioning fit for cultivation; as far as French Creek all between the Venango path and the Allegheny, there is very little land fit for cultivation, as it is a continued chain of high barren mountains, except small breaches for creeks and rivulets, to disembogue themselves into the river. These have very small bottoms.

As I proceeded along the path leading to French Creek, about five miles to a branch of Beaver, or rather in this place called Canaghquenese,[1] I found the land of a mixed quality, some very

[1] Conoquenessing.

strong (stony), and broken with large quantities of fallen chestnut, interspersed with strips covered with hickory, lofty oak, and for underwood or brush dogwood, hazel, etc.; along the creek very fine, rich, and extensive bottoms, in general fit for meadows; from thence to another branch of said creek, called Flat Rock[1] Creek, about ten miles distant, the land is generally thin, stony, and broken; loaded, however, with chestnut timber, the greatest part of which lies flat on the earth, which renders it difficult travelling; at the usual crossing place on the last-named creek, there is a beautiful fall over a rock ten or twelve feet high; at the fording immediately above the fall, the bottom is one entire rock, except some small perforations which *is* capacious enough to receive a horse's foot and leg; it is here about forty yards wide, and most extremely rapid. From Flat Rock to Sandy Creek by Hutchins and Snell, called Lycomic, is about twenty-four miles; on the first twelve there are a considerable quantity of tolerable level lands, though much broken with large stony flats, on which grows heavy burthens of oak, beech, and maple; particularly seven or eight miles from the creek there is a plain or savanna three or four miles long, and at least two wide, without anything to obstruct the prospect,

[1] Slipperyrock.

except here and there a small grove of lofty oaks or sugar tree ; on the skirts the ground rises gradually to a moderate height, from which many fine springs descend, which water this fine tract abundantly; along these rivulets small, but fine spots of meadow may be made; from hence the remaining twelve miles to Sandy Creek is a ridge or mountain, which divides the waters of the Allegheny, the Beaver, and Ohio, and is from east to west at least three times as long as it is broad; on the whole of this there is little fit for cultivation, yet some of it is well calculated for raising stock. But a person must be possessed of very large tracts to enable him to do even this to purpose.

From Sandy to French Creek is about seven or eight miles from the mouth, but it soon forks into many small runs, and it is but a few miles from the mouth to the source. There are two or three small bottoms only on this creek; to French Creek is one entire hill, no part of which is fit for cultivation.

On the lower side, at the mouth of French Creek, where the fort called Venango formerly stood, there *is* three or four hundred acres of what is commonly called "upland," or "dry bottom," very good land. On the northeast side, about one mile from the mouth, another good bottom begins, of four or five hundred acres; and on the summit

of the hills, on the same side, though high, there *is* a few hundred acres of land fit for cultivation; this is all in this neighborhood nearer than the first fork of the creek, which is about eight miles distant. On the road leading from French to Oil Creek, within about three miles and a half from Venango, there is a bottom of fine land on the bank of the Allegheny, containing four or five hundred acres; there is little besides on Oil Creek fit for cultivation.

French Creek is one hundred and fifty yards wide.

From French to Oil Creek is about eight miles. This is not laid down on any map, notwithstanding it is a large stream, not less than eighty or perhaps a hundred yards wide, at the mouth a considerable depth, both of which it retains to the first fork, which is at least twenty miles up, and I am certain, is as capable of rafting timber, or navigating large boats, as French Creek in the same seasons this high. On the northeast, or upper side of this creek, at the mouth *is* four or five hundred acres of good bottom, and about a mile up, there is another small bottom on the southwest side, which is all the good land to the first fork.

Oil Creek has taken its name from an oil or bituminous matter being found floating on the

surface. Many cures are attributed to this oil by the natives, and lately by some whites—particularly rheumatic pains and old ulcers. It has hitherto been taken for granted that the water of the creek was impregnated by it, as it was found in so many places; but I have found this to be an error, as I examined it carefully, and found it spring out of two places only; these two are about four hundred yards distant from [each] other, and on opposite sides of the creek. It rises in the bed of the creek, at very low water, in a dry season. I am told it is found without any mixture of water, and is pure oil; it rises, when the creek is high, from the bottom in small globules; when these reach the surface they break, and expand to a surprising extent, and the flake varies in color as it expands; at first it appears yellow and purple only, but as the rays of the sun reach it in more directions, the colors appear to multiply into a greater number, more than can at once be comprehended.

From Oil Creek to Cushkushing, an old Indian town, is about seventeen miles. The whole of this way is barren; high mountains, not fit for cultivation; the mountain passes so close on the river that it is almost impassible, and by no means impracticable, when the river is high; then travel-

lers, either on foot or horseback, are obliged to ascend the mountain and proceed along the summit.

At Cushkushing there is a narrow bottom, about two miles long, good land, and a very fine island, fifty or sixty acres, where the Indians formerly planted corn. From Cushkushing to another old Indian town, also on the bank of the river, is about six miles; this place is called Canenakai, or Hickory Bottom. Here *is* a few hundred acres of good land, and some small islands. From hence to a place named by the natives the Burying Ground, from a tradition they have that some extraordinary man was buried there many hundred years ago, is about thirteen miles. Most of this way is also a barren, and very high mountain, and you have to travel greatest part of the way in the bed of the river. To Brokenstraw Creek, or Bockaloons, from the last-named place, is about fourteen miles; here the hills are not so high or barren, and there are sundry good bottoms along the river. About half-way there is a hill, called by the Indians Paint Hill, where they find a good red *oker*. Brokenstraw is thirty yards wide; there is a fine situation and good bottom near the mouth on both sides; but little way up the creek large hills covered with pine make their appearance. From Brokenstraw to Conewago is eight or nine miles; here there is a narrow bot-

tom interspersed with good, dry land and meadow ground all the way, and there is a remarkable fine tract at the mouth of the Conewago, of a thousand or perhaps more acres, from the whole of which you command a view up and down the main branch of Allegheny, and also of Conewago*o*, a considerable distance. Conewago*o* is one hundred and fifty yards wide, and is navigable for large boats to the head of Jadaque[1] Lake, which is upwards of fifty miles from its junction with the east branch of the river. The head of Jadaque Lake is said to be only twelve miles from Lake Erie, where it is said the French formerly had a fort, and a good wagon-road from it to the lake. Conewago*o* forks about thirty miles from the mouth of the east branch, is lost in a morass, where the Indians frequently carried their canoes into a large creek called the Cateragne,[2] which empties into the lake forty or fifty miles above Niagara.

The account of the branches of Conewago*o* I had from my guide, an Indian chief of the Senecas, a native of the place, and an intelligent white man, who traversed all this country repeatedly. I have every reason to believe the facts are so, though I do not know them actually to be so, as I

[1] Chatauque. [2] Cattaraugus.

went only a small distance up this creek, being informed there is no land fit for cultivation to the first fork or to the lower end of Jadaque Lake, which begins seven miles up the west branch, except what has already been mentioned at the mouth of the creek. The appearance of the country, in a view taken from the summit of one of the high hills, fully justified this report, as nothing can be seen but one large chain of mountains towering above another. Here, perhaps, it may not be amiss to insert the supposed distances in a connected view; and first, from Fort Pitt to—

McLean's (Depreciation) Line . . .	40 miles.
Fourth Branch of Canaghquenese . . .	5 "
Rocky, or Flat Rock Creek	10 "
Sandy Creek	24 "
French Creek	8 "
Oil Creek	6 "
Cuskacushing	17 "
Cananacai	6 "
The Burying Ground	13 "
Brokenstraw	14 "
Conewagoo	9 "
	154
Deduct from Fort Pitt to McLane's Line, between the Depreciation and Donation Tracts	40
Leaving the Donation Land to be	114

For the same reason that I did not proceed far up the Conewagoo, I returned the most direct

road to the Burying Ground. Here three old Indian paths take off, one to Cayah*aga*, on Lake Erie; one to the Cuskusky, on the west branch of Beaver Creek;[1] and the third to a salt spring, higher up the same branch of Beaver. From hence I crossed the chain of mountains, which runs along the river, and in travelling what I computed to be about twenty-five miles, reached the first fork of Oil Creek. On the most easterly branches there are vast quantities of white pine, fit for masts, boards, etc. In this fork is a large body of tolerably good land, though high; and along the West Branch, very rich and extensive bottoms, fit for meadow of the first quality. This continues about fifteen miles along the creek, which is a beautiful stream, from thirty to forty yards wide, and pretty deep. From the West Branch of Oil Creek I proceeded on a westerly course about ten miles along a ridge which is difficult to ascend, being high and steep, but when you get up it is flat on the summit, four or five miles broad, very level, and fine springs issue from the declivity on both sides, the land heavily wooded with hickory, large oak, maple, and very large chestnut. From the west end of this ridge several large springs rise, which form

[1] Mahoning.

the most easterly branch of French Creek. There are five branches of this creek—which is called Sugar Creek by Mr. Hutchins—all of which have fine bottoms, excellent for meadow and pasturage, but the upland or ridges between are stony, cold, moist, and broken, chiefly covered with beech, pine, and chestnut.

At the fork or junction of Sugar Creek with the main or west branch of French Creek—which is only eight miles up from Venango—there *is* some very fine plains or savannas, and a large quantity of meadow ground. There are but few bottoms, and little or no upland besides what is above mentioned, for twenty miles up this branch, where there is considerable quantity of excellent meadow ground; besides there is not much good land until you reach Le Berroff.[1]

From Venango I returned along the path leading to Pittsburgh, to within seven miles of Flat Rock Creek; here I took a west course, along a large dividing ridge, already noticed, about ten miles, where I struck a branch of Canaghquenese, or Beaver,[2] about thirty yards wide, and which joins Flat Rock before it empties into the main branch of Canaghquenese. On this creek *is* very fine and large bottoms, and in some places some

[1] Le Bœuf.

[2] Probably Muddy Creek.

good upland, though much broken with high, barren hills and some deep morasses. This creek is not laid down on any map that I have seen. After having explored this creek and lands adjacent, I proceeded a south course till I struck McLane's line, within eight miles of the Great Beaver Creek, which I followed to the creek; all this distance is very hilly; there are some small bottoms, but the major part of those eight miles is not fit for cultivation.

From where Mr. McLane's line strikes the great or west branch of Beaver, I continued exploring the country up the several western branches of the Beaver, viz., the most westerly, and two branches denominated the Shenango.[1] The distance from the above-named line to an old Moravian town is three or four miles, from thence to Shenango two and a half miles; thence to a fork or second branch,[2] two miles; from the mouth of Shenango to Cuskuskey on the west branch (Mahoning), is six or seven miles, but it was formerly called Cuskuskey by the natives along this branch as high as the salt spring, which is twenty-five miles from the mouth of Shenango.

There is such a similarity in almost all the lands on all the branches of Beaver Creek, that a par-

[1] The Mahoning and the Shenango and Neshannock.

[2] Neshannock.

ticular description of each would be mere repetition. I shall, therefore, only briefly observe that the bottoms generally are the most excellent that can well be imagined, and are very extensive; the upland is hilly, and some bad; but most of the hills are fertile and very rich soil, from the falls of the Great Beaver up to the west branch, and twenty miles up the Shenango branch is to a considerable distance on either side those creeks, there is little land but may be cultivated, and I believe no country is better watered. I hereby transmit a sketch of that part of the country only which my duty as agent obliged me explore. This, together with the remarks herein contained will, I flatter myself, give a juster idea of the tract than any map yet published. Though I do not pretend to say it is correct, as the distances are all supposed, and there are probably several omissions in this sketch, yet more creeks, hills, etc., are noticed than have been before, and their real courses and near connection by hills and ridges ascertained.

No creek is laid down or branch which is not upward of twenty yards wide—smaller ones are not noticed—on the whole, I have endeavored, as well in the remarks as in the sketch, so far as I have gone, to answer the end for which I was appointed agent, as well as in my power.

WM. IRVINE, *Agent.*

N. B. The dotted lines show the several courses taken in exploring the country on the sketch; besides the several offsets were made to gain summits of hills for the benefit of prospects. All the branches of Canaghquenese, which are six or seven in number, join and form one large creek before it enters the Beaver; the junction is about eleven miles above the mouth of Beaver from above the falls, and four below McLane's line. I have been unavoidably obliged to leave the north and west lines open in the sketch, as I could not do otherwise, until these boundary lines are run; this also prevented my completing the business, not being able to determine, perhaps within several miles, where the lines may run. I am persuaded the State of Pennsylvania might reap great advantages by paying early attention to the very easy communication with Lake Erie, from the western parts of their country, particularly Conewago*o*, French Creek, and the west branch of Beaver. From a place called Mahoning, to where it is navigable for small craft, is but thirty miles to Cuyahoga River, which empties into the lake. A good wagon road may be made from Fort Pitt to the mouth of French Creek, and all the way from the mouth of Beaver to Cuyahoga, which is not more than eighty miles. The breadth of the tract cannot be ascertained till the western boundary is run. Mr.

McLane suspends, for this reason, extending his line further west than the Great Beaver, which he has found to be forty-seven miles from the mouth of Mogwolbughtiton; from this part of Beaver Creek is conjectured the west line of the State will run ten or twelve miles. (Letter Book, vol. i. pp. 344–50.)

Gen. Irvine returned from his tour to Fort Pitt in July, 1785. His exploration was therefore made in the previous months, probably of May and June.

LETTER OF DAVID REDICK, RELATIVE TO THE ALLEGHENY RESERVATION OF 3000 ACRES.[1]

To his Excellency Benjamin Franklin,
and the Honorable Council.

This country has never experienced a winter more severe. The mercury has been at this place 12° below the extreme cold point; at *Moskingdum* 20, and at Pittsburg within the bulb or bottle. The difference may be accounted for in part by the inland situation of this place, and greater or less quantities of ice at the others. It has been altogether impossible for me, until within these few days past, to stir from the fireside. On Tuesday last I went with several other gentlemen to fix on

[1] 11 Pa. Arch. 244.

the spot for laying out the town opposite Pittsburgh, and at the same time took a general view of the tract, and finds it far inferior to expectations, although I thought I had been no stranger to it. There is some pretty low ground on the rivers Ohio and Allegh*ania*, but there is but a small proportion of dry land which appears any way valuable, either for timber or soil; but especially for soil it abounds with high hills, deep hollows, almost inaccessible to a surveyor. I am of opinion that if the inhabitants of the moon are capable of receiving the same advantages from the earth which we do from their world, I say, if it be so, this same far-framed tract of land would afford a variety of beautiful lunar spots, not unworthy the eye of a philosopher.

I cannot think that ten acre lots on such pits and hills will profitably meet with purchasers, unless like a pig in a poke, it be kept out of view. Would it not be more advantageous to the State if the Legislature would alter the law—that a town and a reasonable number of out-lots, for the accommodation of the town be laid out, the remainder of the lands be laid out, 200 acre lots fronting on the river, where practicable, and extending back so as to include the hilly and uneven ground, which might be of some use to a farm.

I cannot believe but Col. Lowry and Col. Irwin,

both members of the Assembly, and who knows the land well, will on consideration be of opinion with me, and that small lots on the sides of those hills can never be of use for any purpose, but as above mentioned. Perhaps council may think proper to lay the matter before the Legislature. I shall go on to do the business as soon as the weather will admit; and before I shall have proceeded further than may accord with the plan here proposed, I may have the necessary information whether to go on as the law now directs or not. I have the honor to be

Your Excellency's and the

Council's most Obt. Servant,

DAVID REDICK.

WASHINGTON, 19th February, 1788.

ADDRESS OF CORNPLANTER, OR CAPTAIN ABEAL, BEFORE THE SUPREME EXECUTIVE COUNCIL OF PENNSYLVANIA.[1]

PHILADELPHIA, Friday, October 29, 1790.

His Excellency Thomas Mifflin, Esq., President; Samuel Miles, Zebulon Potts, Richard Willing, James Martin, Amos Gregg, Lord Butler, and Nathaniel Breading, Esqrs., met in council.

[1] 16 Col. Rec. 501–506.

The Cornplanter and the five Indians who accompanied him attended, and made to Council the following representation:—

The Fathers of the Quaker State: O'Beale, or Cornplanter, returns thanks to God for the pleasure he has in meeting you this day with six of his people.

Fathers: Six years ago I had the pleasure of making peace with you, and at that time a hole was dug in the earth, and all contentions between my nation and you ceased and were buried there.

At a treaty then held at Fort Stanwix between the Six Nations of Indians and the Thirteen Fires, three friends from the Quaker State came to me, and treated with me for the purchase of a large tract of land upon the northern boundary of Pennsylvania, extending from Tioga to Lake Erie, for the use of their warriors. I agreed to the sale of the same, and sold it to them for four thousand dollars. I begged of them to take pity on my nation and not to buy it forever. They said they would purchase it for ever, but they would give me further one thousand dollars in goods when the leaves were ready to fall, and when I found that they were determined to have it, I agreed that they should have it. I then requested, as they were determined to have the land, to permit my people to have the game and hunt upon the same,

which request they complied with, and promised me to have it put upon record, that I and my people should have that privilege.

Fathers: The Six Nations then requested that another talk might be held with the Thirteen Fires, which was agreed to, and a talk was afterwards held between them at Muskingum. Myself, with three of my chiefs, attended punctually, and were much fatigued in endeavoring to procure the attendance of the other nations, but none of them came to the Council Fire except the Delawares and Wyandots.

Fathers: At the same treaty the Thirteen Fires asked me on which side I would die—whether on their side, or on the side of those nations who did not attend. I replied: Listen to me, Fathers of the Thirteen Fires, I hope you will consider how kind your fathers were treated by our fathers, the Six Nations, when they first came into this country, since which time you have become strong, insomuch that I now call you fathers. In former days, when you were young and weak, I called you brothers, now I call you fathers. Fathers, I hope you will take pity on your children, for now I inform you that I'll die on your side. Now, Fathers, I hope you will make my bed strong.

Fathers of the Quaker State, I speak but little now, but will speak more when the Thirteen Fires

meet. I will only inform you further, that when I had finished my talk with the Thirteen Fires, General Gibson, who was sent by the Quaker State, came to the Fire and said that the Quaker State had bought of the Thirteen Fires a tract of land extending from the northern boundary of Pennsylvania at the Conewango River to Buffalo Creek on Lake Erie, and thence along the said lake to the northern boundary of Pennsylvania aforesaid. Hearing this I ran to my father and said to him, father, have you sold this land to the Quaker State? and he said he did not know; it might have been done since he came there. I then disputed with Gibson and Butler, who was with him, about the same, and told them I would be satisfied if the line was run from Conewango River through Chatochque Lake, to Lake Erie, for Gibson and Butler had told me that the Quaker State had purchased the land from the Thirteen Fires, but that notwithstanding the Quaker State had given me one thousand dollars in fine prime goods, which were ready for me and my people at Fort Pitt, we then agreed that the line should be run from Conewango River through Chatochque Lake into Lake Erie, and that one-half of the fish in Chatochque Lake should be mine and one-half theirs. They said, as the Quaker State had purchased the whole from the Thirteen Fires, that the

Thirteen Fires must pay back to the Quaker State the value of the remaining lands. When I heard this my mind was at ease, and I was satisfied. I then proposed to give a half a mile square of land upon the line agreed upon to a Mr. Hartshorn, who was an ensign in General Harmar's army, and to a Mr. Britt, a cadet, who acted as a clerk upon the occasion, and who I well knew by the name of Halftown, for the purpose of their settling there, to prevent any mischief being committed in future upon my people's lands, and I hoped the Quaker State would, in addition thereto, give them another half a mile square on their side of the line, so agreed upon for the same purpose, expecting thereby that the line so agreed upon would be known with sufficient certainty, and that no disputes would thereafter arise between my people and the Quaker State concerning it. I then went to *my* Father of the Thirteen Fires and told him I was satisfied, and the coals being covered up, I said to my children, you must take your course right through the woods to Fort Pitt. When I was leaving Muskingum my own son, who remained a little while behind to warm himself at the fire, was robbed of a rifle by one of the white men, who I believe to have been a Yankee. Myself, with Mr. Joseph Nicholson and a Mr. Morgan, then travelled three days together through

the wilderness, but the weather being very severe they were obliged to separate from me, and I sent some of my own people along with Mr. Nicholson and Mr. Morgan to conduct them to Wheel*en*. After I separated from Mr. Nicholson and Mr. Morgan, I had under my charge one hundred and seventy persons of my own nation, consisting of men, women, and children, to conduct through the wilderness, through heaps of briars, and having lost our way we with great difficulty reached Wheel*in*. When arrived there, being out of provision, I requested a Mr. Zanes to furnish me and my people with b*ea*con and flour to the amount of seventeen dollars, to be paid for out of the goods belonging to me and my people at Fort Pitt. Having obtained my request I proceeded on my journey for Pittsburgh, and about ten miles from Wheel*en* my party was fired upon by three white people, and one of *my* people, in the rear of my party, received two shot through his blanket.

Fathers: It was a constant practice with me throughout the whole journey to take great care of my people, and not to suffer them to commit outrages or drink more than what their necessities required. During the whole of my journey only one accident happened, which was owing to the kindness of the people of the town called Catfish,[1]

[1] Washington.

in the Quaker State, who, while I was talking with the head men of the town, gave to my people more liquor than was proper, and some of them got drunk, which obliged me to continue there with my people all night; and in the night my people were robbed of three rifles and one shot-gun; and though every endeavor was used by the head men of the town, upon complaint made to them, to discover the perpetrators of the robbery, they could not be found; and on my people complaining to me, I told them it was their own faults by getting drunk.

Fathers: Upon my arrival at Fort Pitt I saw the goods, and one hundred of the blankets were all moth-eaten and good for nothing. I was advised not to take the blankets, but the blankets which I and my people then had being all torn by the briars in our passage through the wilderness, we were under the necessity of taking them to keep ourselves warm; and what most surprised me was, that after I had received the goods they extinguished the fire and swept away the ashes; and having no interpreter there I could talk with no one on the subject. Feeling myself much hurt upon the occasion, I wrote a letter to you, Fathers of the Quaker State, complaining of the injury, but never received any answer. Having waited a considerable time, and having heard that my letter

got lost, I wrote a second time to you, Fathers of the Quaker State, and then I received an answer.

I am very thankful to have received this answer, and as the answer entreated me to come and speak for myself, I thank God that I have this opportunity. I therefore speak to you as follows: I hope that you, Fathers of the Quaker State, will fix some person at Fort Pitt to take care of me and my people. I wish, and it is the wish of my people, if agreeable to you, that my present interpreter, Joseph Nicholson, may be the person, as I and my people have a confidence in him, and are satisfied that he will always exert himself to preserve peace and harmony between you and us. My reasons for asking an interpreter to be placed there are, that oftentimes when my hunters and people come there, their canoes and other things are stolen, and they can obtain no redress, not having any person there on whom they can rely to interpret for them, and see justice done to them. [Some minor matters follow.]

Fathers: I have now had the pleasure to meet you with six of my people. We have come a great way, by your desire, to talk with you and show to you the many injuries my nation has sustained. It now remains with you to do with me and my people what you please, on account of the present trouble which I and my people have taken for

your satisfaction, and in compliance with your request.[1]

ACCOUNT OF FT. McINTOSH AND OF THE FRENCH FORTS AT PRESQUE ISLE, LE BŒUF, MACHAULT OR VENANGO, AND DU QUESNE.

FORT McINTOSH.

Fort McIntosh being the first advanced post in the Indian territory, the scene of the Indian treaty of 1785, and mentioned in the State reservation in the Act of 12th March, 1783, and now the site of Beaver, a town laid out by the State on this reservation, a short account of it will be interesting.

General Lachlan McIntosh, a Georgian, an officer of distinction, and reputed to be well acquainted with Indian warfare, was appointed to command, to take the place of General Hand in the west.

On the 29th of May, 1778, he reached Lancaster with the 13th Virginia Regiment. The 8th Pennsylvania had marched previously. His intention was to march into the Indian country and attack the Indians at home. His first destination was to the towns on the Sandusky.

[1] The remainder of the speech is omitted.

Writing from Fort Pitt on the 29th of December, 1778, he informed Vice-President Bryan of the Supreme Executive Council, that he had erected a good strong fort upon the Indian side of the Ohio, just below Beaver Creek, for the reception and security of prisoners, with barracks for a regiment. It was built late in the autumn of 1778.

In pursuance of his plan he marched to the Tuscarawas, and builded Fort Laurens, below and not far from the present town of Bolivar. By this time it was too late in the season to prosecute his plans, and he returned to Fort Pitt. In the spring of 1779 finding his health broken, and discouraged by the difficulties to be overcome, he resigned and returned to Philadelphia in April.

According to General Daniel Broadhead, who succeeded him in command in 1779, General McIntosh's design (ridiculed by Broadhead) was to March against Detroit.

We have no minute description of Fort McIntosh. It was visited in December, 1784, by Arthur Lee, one of the United States Commissioners to treat with the Indians, who says in his journal: "It is built of well-hewed logs, with four bastions. Its figure is an irregular square, the face to the river being longer than the side to the land. It is

about equal to a square of fifty yards. It is well built and strong against musketry."

From others it is learned the fort was a regular stockade work, defended by six pieces of cannon. Tradition says it had a covered way down the face of the hill in front to a well for water. This is probable, as no living water is found near to it except the river at the base of the hill, which here is about one hundred and thirty feet high from low-water mark.

In 1829, when the writer first saw the site of the fort, the only remains visible were the mounds, indicating where the corner bastions stood, near the top of the hill, overlooking the Ohio, and a swell and a depression running between these mounds, parallel with the river, indicating the front intrenchments. There was also a cobble-stone pavement, probably fifteen or twenty feet square, in the rear of this intrenchment about one hundred and ten or twenty feet. The lower, or south-western, bastion stood near the mouth of the present Market Street. Immediately opposite the fort, on the other side of the Ohio, a long gully cuts the face of the high hill. Down this gully came a well-made military road, laid out from Fort Pitt to Fort McIntosh, by General Broadhead, probably in 1779. At the termination of this road was the ferry, in use when the writer first knew

this place. This road, still known as the Broadhead Road, yet exists in many parts of its first location.

General Broadhead seems, from his letters, to have had a poor opinion of the fort, as well as of the plans of General McIntosh. In his letter to Major-General Armstrong, of April 16, 1779, after writing of General McIntosh's ambition, and that he swore nothing less than Detroit was his object, he says: "And it was owing to the General's determination to take Detroit that the romantic building called Fort McIntosh was built by hands of hundreds who would rather have fought than wrought."

In another letter he speaks of one thousand men being kept idle while building this fort. Of the fort he said—in a letter of June 5, 1779, in reply to General Washington's order to make it the rendezvous for his troops—"there is neither meadow, pasture, or spring-water convenient to this post."

As early as 1783 it seems that the fort had been disused for military purposes. On September 23, 1783, General William Irvine, commandant at Fort Pitt, pursuant to orders from the Council, issued instructions to William Lee and John McClure to take immediate charge of the fort to protect it from depredation.

In the autumn of 1784 the fort had gone out of repair so much it became necessary to repair it thoroughly for the purpose of treating with the Indians. The treaty was concluded there on the 21st of January, 1785.

Lieutenant-Colonel Josiah Harmar, being ordered from Fort McIntosh to the Muskingum, on the 8th of February, 1785, wrote to President Dickinson: "I beg leave to observe to your Excellency and the Honorable Council, that unless some person is directed to remain here, immediately upon my marching hence, it will be demolished by the emigrants to Kentucky. Previous to my arrival they had destroyed the gates, drawn all the nails from the roofs, taken off all the boards, and plundered it of every article."

April 27, 1785, an order of Council was made for this purpose.

The following officers were at the fort in 1784–5: Josiah Harmar, Lieutenant-Colonel Commanding; Walter Finney, David Zeigler, William McCurdy, Captains of Infantry; Stewart Herbert, Ercurius Beatty, Thomas Doyle, Lieutenants; John Armstrong, Andrew Henderson, Ebenezer Denny, Ensigns; John McDowell, Surgeon; Richard Allison, Surgeon's Mate; Captain Thomas Douglas and Lieutenant Joseph Ashton, of Artillery.

On the 29th August, 1785, the fort was visited

by Andrew Ellicott and Andrew Porter, the Pennsylvania Commissioners locating the western boundary of the State. They were in return visited by officers Harmar, Finney, Doughty, and Dr. McDowell.

An old French town stood, about 1750, lower down the plain, on the hill above the Ohio, and on property now of the late David Minis.

French Forts by which the Region West of the Allegheny River was held.

PRESQUE ISLE.[1]

In 1756 it is described as a French fort, situated on Lake Erie, about thirty miles above Buffalo Fort, built of squared logs, filled in with earth, the barracks within the fort, and garrisoned with about 150 men, supported chiefly by a French settlement begun near it, consisting of about 450 families. Indian families about it pretty numerous. They have a priest and schoolmaster, some grist-mills and stores in the settlement.

In 1759 it is described as a square with four bastions, square log work, no platforms raised so that they can be used, only a small platform in each bastion for a sentinel; no guns on the walls, but four four-pounders in one of the bastions, not

[1] 12 Pa. Arch. 443.

mounted on carriages; the wall single logs, no bank within or ditch without; two gates of equal size about ten feet wide, one fronting on the lake, and about 300 yards distant, the other to the road to Le Bœuf. The magazine is a stone house covered with shingles, and not sunk in the ground, standing on the right bastion next the lake going to Presque Isle from Le Bœuf; the other houses square logs; 500 French expected from a fort on the north side of the lake. There were four batteaux at Presque Isle.

This fort was abandoned by the French in 1759 and burnt.

The town of Erie now occupies the site of the fort.

FORT LE BŒUF.[1]

This fort was situated at the head of navigation on French Creek, about fifty or sixty miles above the mouth. The creek was called by the French Bœuf, or Beef Creek. Waterford now occupies the site.

The fort is that described by General Washington in the journal of his visit in 1753.

It is situated on the south or west fork of French Creek, near the water, and is almost sur-

[1] 12 Pa. Archiv. 387–8.

rounded by the creek and a small branch of it, which forms a kind of island. Four houses compose the sides. The bastions are made of poles driven into the ground, standing more than twelve feet above it, and sharp at top, with port-holes cut for cannon and loop-holes for small arms to fire through. There are eight six-pound pieces mounted in each bastion, and one piece of four pounds before the gate. In the bastions are a guard-house, chapel, doctor's lodging, and the commander's private store, round which are laid platforms for the cannon and men to stand on. There are several barracks without the fort for the soldiers' dwelling, covered, some with bark and some with boards made chiefly of logs. There are also several other houses, such as stores, smiths' shops, etc. Number of men supposed 200, exclusive of officers, of which there are many.

The commandant at the time of Washington's visit was Legardeur St. Pierre.

In 1758, when visited by Frederick Post, the fort had gone down very much, and had only 30 men and one officer.

In March, 1759, it was described by an Indian named Thos. Bull. In August, 1759, it was abandoned and burnt by the French.

FORT MACHAULT OR VENANGO.[1]

This fort was built at the mouth of French Creek, just below it. It was known to be there in 1754, and probably had been for some time. A prisoner in 1756 speaks of it as Venango at the mouth of the creek, with a captain's command of about fifty men; of stockades, and weak, and scarce of provisions, a few Indian families about the place; a new fort intended, but not then built.

In October, 1757, Mons. La Chavignirie said his father, a lieutenant of marines, was commandant of Fort Machault, built lately at Venango, and now finishing. That there are about fifty regulars and forty laborers there, and a considerable reinforcement expected from Montreal. It was about fifty-five miles by land from Fort Le Bœuf.

In 1758 an Indian informed Frederick Post that Venango was a small fort, with but one officer and twenty-five men, and much distressed for provisions.

In 1759 the fort was abandoned and burned by the French. Franklin now occupies the site of Fort Machault, or Venango.

[1] 12 Penna. Arch. 463; 8 Col. Rec. 380, 396.

FORT DU QUESNE.

This fort was built by Mons. Contrecœur, the French Commandant, in 1754. He landed on the 17th April, 1754, with 300 canoes, 1000 French and Indians, and 18 pieces of cannon. He had descended the Ohio (Allegheny) from fort Venango; he drove off Ensign Ward, engaged in building a redoubt, and commenced the building of Fort Du Quesne, which he named after the Marquis Du Quesne, Governor-General of Canada, or New France.

The fort is thus described in 1756 by John McKinney, an escaped prisoner:—

Fort Du Quesne is situated on the right side of the Monongahela, in the fork between that and Ohio [Allegheny]. It is four square, had bastions at each corner; it is about 50 yards long and about 40 yards wide; has a well in the middle of the fort, but the water bad; about half the fort is made of square logs, and the other half, next the water, of stockades. There are intrenchments cast up all around the fort seven feet high, which consists of stockades driven into the ground near to each other, and wattled with poles like basket-work, against which the earth is thrown up in gradual ascent. The steep part is next the fort, and has three steps all along the intrenchment

for the men to go up and down to fire at the enemy. The intrenchments are about four rods from the fort, and go all around, as well on the side next the water as the land. The outside of the intrenchment next the water joins to the water. The fort has two gates, one of which opens on the land side, and the other on the water side, where the magazine is built. That to the land side is in fact a draw-bridge, which in daytime serves as a bridge for the people, and in the night is drawn up by iron chains and levers.

Under the draw-bridge is a pit or well the width of the gate, dug down deep to water; the pit is about eight or ten feet broad; the gate is made of square logs; the back gate is made of logs also, and goes upon hinges, and has a wicket in it for the people to pass through in common. There is no ditch or pit at this gate. It is through this gate they go to the magazine and bake-house, which are built a little below the gate within the intrenchments. The magazine is made almost underground, and of long logs, and covered four feet thick with clay over it. It is about ten feet wide and about thirty feet long.

The stockades are round logs, better than a foot over, and about eleven or twelve feet high; the joints are secured by split logs. In the stockades are loop-holes, made so as to fire slanting towards

the ground. The bastions are filled with earth solid, about eight feet high. Each bastion has four carriage guns, about four pound; no swivels nor any mortars that he knows of. They have no cannon but at the bastions. The back of the barracks and buildings in the front are of logs, placed about three feet distant from the logs of the fort. Between the building and the logs of the fort it is filled with earth above eight feet high, and the logs of the fort extend about four feet higher, so that the whole height of the fort is about twelve feet. There are no pickets or palisadoes on the top of the logs or wall of the fort. The houses are all covered with boards, as well the roof as the sides that look inside the fort, which they sawed by hand. There are no bogs nor morasses near the fort, but good dry ground, which is cleared for some distance from the fort, and the stumps cut close to the ground. A little within musket-shot of the fork is a thick wood of some bigness, full of large timber.

The French occupied this fort until November 24, 1758, when it evacuated on the approach of the army under General John Forbes.

DEED OF JOHN B. WALLACE TO THE FARMERS AND MECHANICS' BANK OF PHILADELPHIA.

Deed from William Griffith and Abby his wife, of Burlington, New Jersey; and John B. Wallace and Susan his wife, of Philadelphia—to the Farmers and Mechanics' Bank of Philadelphia, dated December 1, 1818, Recorded in Book B, Beaver County, pp. 420–1–2–3, for allotments of the Pennsylvania Population Company, Nos. 62, 63, 65, 67, 68, and 69. Consideration, a competent sum of money. The individual tracts of land are set forth in the appended schedule, as copied below. The names are generally those of persons in Philadelphia and vicinity; and are copied to exhibit the practice of the day when the warrants were taken out, in 1792, each warrantee (named) giving to the owners of the warrant his deed-poll of conveyance.

Number of the Tracts.	WARRANTEES' NAMES.	Quantity of Acres.
900	John Stille	100
904	William Stiles	150
901	John Steel	200
902	James Starr	200
903	John Steinmetz	200
920	John Sproat	250
928	Jacob Shreiner	100
936	William Rush	200

Number of the Tracts.	WARRANTEES' NAMES.	Quantity of Acres.
937	Joseph Rush	280
938	Daniel Rundle	200
939	John Ross, mert.	200
998	William Miller	200
1003	Charles Massey	60
1004	George Mead, mert.	125
1005	Jonathan Meredith	60
973	William Ralston, Esq'r	100
974	William Ralston	200
975	George Danaghy	115
976	James Reed	200
983	Kitty Doughty	150
986	Samuel Morris	60
989	John M. Nesbit	60
990	John Nancarrow	200
991	Jacob Mitinger	200
992	James Muis	100
943	Gustavus Risberg	135
946	Samuel Pleasants	150
952	Joseph Pfieffer	250
1022	Janey Hunter	424
953	John Phile	400
954	John Phillips	400
955	Andrew Pettit	200
961	Charles Pettit	200
964	William Poyntell	200
965	Derick Peterson	200
949	Doctor John Redman	200
950	John Redman	300
957	Stephen Page	400
958	Peter Ozeas	150

Number of the Tracts.	WARRANTEES' NAMES.	Quantity of Acres.
967	John Olden	100
970	Benjamin Nones	200
969	Caleb North	300
971	John Nixon, Esq'r	200
1011	James McCrea	100
1012	John McCrea	400
1013	Sam Macgaw	250
1018	Christian Marshall	240
1021	Sam. McLean	200
1024	Wm. Porter	230
1025	Wm. Preston	400
1026	Mary Powell	250
1027	Wm. Hunter	400
1028	Henry Knox	400
1023	John Reinagle	400
1031	Ann Dunkin	320
1015	Barnabas McShane	200
	Acres . .	12,109

The following names of warrantees (chiefly Philadelphians) are taken from a deed of Maurice Wurts and William Wurts, and Ham Jan Huidekoper—to William Meredith (Philadelphia) and John Day (New York), dated August 6, 1833. They were a part of the warrants which had belonged to the Pennsylvania Population Company. The purpose of the deed was to perfect the title to the lands and land contracts which had belonged to William Griffith, of Burlington,

N. J., in Meredith and Day, as the assignees of Maurice and William Wurts.

Names of Warrantees, viz :—

John Stille.
Jacob Snyder.
John Steinmitz.
Walter Stewart.
William Sprott.
William Smith.
George Schlosser.
George Rutter.
John Ross (Merchant).
Jonathan Mifflin.
Jacob Miley.
William Ralston.
Edmund Randolph.
William Poyntell.
William Rawle.
Jacob Morgan.
Elizabeth Roberdeau.
George Morton.
James Moore.
John Nancarrow.
James Muir.
Andrew Porter.
Gustavus Risberg.
Joseph Rakestraw.
Alexander Wright.
John Phile.
Andrew Pettit.
Robert Patterson.
William Stiles.
James Stair.
John Souder.
John Sprott.
Jacob Schreiner.
Mary Sawyers.
John Sparhawk.
Daniel Rundle.
William Miller.
Jonathan Meredith.
John Mifflin, Esq'r.
William Ralston, Esq'r.
Elliston Perot.
James Read.
Kitty Doughty.
John Rodgers.
Samuel Morris.
Abraham Morrow.
Jacob Mytinger.
John M. Nesbit.
Daniel Richards.
Samuel Pleasants.
James Reynolds.
Zachariah Poulson.
John Phillips.
Joseph Pfeiffer.

Charles Pettit.
James Pearson.
Griffith Owen.
John Olden.
Benjamin Nones.
John Nicholson (Gunsmith).
James McCrea.
Solomon McNair.
William McPherson.
William Preston.
John Rhea.
Ann Duncan.
Doctor John Redman.
Charles Peale (Limner).
Joseph Nones.
John Nixon.
Matthew McConnel (Broker).
John Martin.
Joseph McGoffin.
William Porter.
Mary Powell.
Henry Knox.
Derick Peterson.
Timothy Sherer.

INDEX.

ACADEMIES, 93, 94, 95, 109, 114–116.
ACTIONS, U. S. Courts, 140, 142, 194.
ADDRESS, Cornplanter's, 76, 212–220.
    Agnew's, 167–196.
ADLUM, JOHN, surveys, 75, 102, 106, 107.
AGENT FOR DONATION LANDS, 43, 52, 196–210.
AGNEW, DANIEL, Address, 167–196.
AGREEMENTS, 58, 71.
ALEXANDER, WM., surveyor, 41.
ALLEGHENY RIVER, 13, 15, 17.
    State reservation, 18, 73, 79–90, 176.
    common, 82, 84.
    Redick's letter, 80, 210.
    town and out-lots, 81, 84.
    minor reservations, 81, 87
    sales, 81.
    court-house, etc., 82, 84.
    churches, 82, 83, 84.
    burial-grounds, 82.
    centre squares, 85.
    city charter, 87, 88.
    designation of uses, 82, 87, 88, 89.
ALLEN, JAMES, Journal, 20.
ALLOUEZ, 3.
AMHERST, GENERAL, 7.
APPLICATIONS FOR LANDS REFUSED, 146, 147.
APPROPRIATION OF TERRITORY, 17, 22, 32, 102, 103.
ATTORNEY-GENERAL *v.* GRANTEES, 138.

BALDWIN, HENRY, 192, 193.
BARNES *v.* IRVINE, 157.
BEACH OF LAKE ERIE, 112.

BEAVER, KING, 174, 175.
name, 173, 174, 175.
Creeks, Big and Little, 15, 173, 174, 207.
State reservations 18, 73, 90–101.
town laid out, 91, 92, 176.
out-lots, 91.
sales, 92, 93, 95, 96, 97, 98.
academy grant, 93, 94.
water-lots, 94.
minor reservations, 91, 92, 93.
court-house, etc., 95, 167, 195–189.
academy building, 95.
burial ground, 95.
Presbyterian church, 98.
Methodist church, 99.
analogy to Allegheny, 99, 100.
county courts, 189, 190.
BINGHAM, WILLIAM, 68.
BOARD OF TREASURY, U. S., 68.
BŒUF, LE, 4, 74, 102–116, 174, 206, 226.
BOQUET, COL., 8, 9, 175.
BOUNDARIES, STATE, 42, 58–65, 66, 69.
temporary, Va., 59, 60.
Indian purchases, 13, 16, 69, 71.
BRADDOCK, GENL., 6.
BRADING, NATHANIEL, 26, 27.
BREBŒUFF, 3.
BROADHEAD, DANIEL, 120, 121, 221–224.
road, 184, 222.
warrant and surveys, 29, 30, 120, 121, 163.
BUSHY RUN, 6.
BUTLER, RICH'D, COL.-GENL., 75, 76.
commissioner, 44, 70, 215.

CAMPBELL *v.* GALBRAITH, 155, 156, 157.
CANOE FORK, Susquehanna, 15.
CAPITALISTS, purchases by, 120, 121.
CARON, LE, 3.
CERTIFICATES, depreciation, 17, 21,
prevention, 132, 136, 137, 139.
CHAMPLAIN, 3.
CHANGES OF CONDITION OF PEOPLE, 170, 171, 172.
CHRISTIANITY AND RELIGION, 82, 83, 100, 101.

CHURCHES AND BURIAL-GROUNDS, 82, 83, 100, 101.
COLOR OF TITLE, 160–165.
COMBINATIONS TO ABSORB LANDS, 25.
COMMISSIONERS, depreciation, 21.
purchase, 71.
boundaries, 42, 43, 58, 59, 61, 62, 64.
Beaver, 90–101.
Erie, etc., 102–116.
COMMON OF PASTURE, 82, 84.
COMPROMISE LAWS, 8, 150, 152.
CONEWANGO, 17, 32, 118, 203–205.
CONFISCATION OF ESTATES, 20.
CONNECTED DRAFTS, 38, 39, 104, 106.
CONQUEST, doctrine of, 10, 11.
CONTRECŒUR'S expedition, 6.
COURTS, Beaver, 189, 190.
U. S., 149.
State, 145.
COXE, TENCH, COMTH *v.*, 127, 132.
CORNPLANTER, ABEAL, 71, 75, 76, 77.
reservation of, 75, 76.
character of, 77.
monument of, 77.
speech of, 71, 212–220.
CRAWFORD, COLONEL, 11, 118.
CRESAP, MICHAEL AND DANIEL, 9.
CROGHAN, GEORGE, 4, 175.
CUSCUSKEY, 174, 201, 202, 207.

DEDICATION, not a, 82, 89, 91, 115, 116.
of Beaver court-house, 167–196.
DEED, Farmers and Mechanics' Bank, 131, 232.
Meredith & Day, 234.
DELAWARE INDIANS, 15, 16.
DEPRECIATION LANDS, 17, 19, 22, 31.
certificates, 17, 20, 30.
division line, 18, 22, 197, 204, 207, 210.
districts, 25, 26.
surveys, 23, 26, 27.
instructions, 23.
sales, 23, 26, 27, 28, 29.
scale of, 21.

DE TONTI, 3.
DICKINSON'S, JAMES, LETTER, 44.
DISPENSING SETTLEMENT ACT, 154, 155.
DONATION LANDS, 17, 32.
division line, 18, 22, 32, 197–210.
districts, 41, 42.
surveys, 35, 38, 44.
boundaries, 32, 37.
distribution of lots, 33, 34, 39, 44–56.
agent to examine, 43, 52, 196–210.
lots in New York, 48, 53, 54, 55.
triangle, 50, 53–55.
struck district, 50, 52, 53.
drafts, 38, 39.
taxation, 33, 56, 57.
DRAFTS, 38, 39, 104, 106.
DUNMORE'S WAR, LORD, 9.
DUPLEX MODE OF TITLE, 119, 178, 179.
DU QUESNE, Fort, 6, 229–231.

ECONOMY, town of, 11, 122.
ELLICOTT, ANDREW, 64, 71, 74, 102, 107, 225.
ENGLAND, 2, 3, 10.
ERIE, Triangle, 66–72.
Presque Isle, 69, 103, 225.
beach of lake, 112.
drafts, 68, 102–116.
town lots, etc., 102–116.
academy, etc., 114–116.
improvement of lots, 104, 106, 108, 110, 111, 115.
exchange of lots, 110, 111.
United States grants, 105, 108, 112.
incorporation, 111.
EVANS, GRIFFITH, surveyor, 42.

FALLEN TIMBERS, Battle of, 12, 122.
FARMERS AND MECHANICS' BANK, 130, 181.
Deed, 232.
FEIGNED ISSUE, 136.
FORBES, JOHN, GEN., Expeditions, 6, 231.
FORFEITURE OF WARRANTS, 134–144.

FORTS, Du Quesne, or Pitt, 6, 7, 8, 175, 197, 229.
Greenville, 12.
Harmar, 1, 71.
Laurens, 176, 221.
Le Bœuf, 4, 74, 102, 116, 174, 206, 226.
McIntosh, 1, 16, 90, 117, 176, 220–226.
Necessity, 5.
Presque Isle, 6, 105, 225.
Stanwix, 1, 13, 14, 177.
Venango or Machault, 4, 6, 199–209, 238.
Washington, 12, 122.
FRANCE, 2, 3.
FRANKLIN, 102, 116, 228.
FRENCH CREEK, 200, 206.
FRENCH INFLUENCE, 3, 7, 9.
FRONTENAC, 3.
FRY, COLONEL, 5.
FULKS, WILLIAM, 193, 194.

GENERAL DISPOSITION OF LANDS, 117–166.
GIBSON, CHIEF-JUSTICE, 37, 142, 155, 159, 161, 163.
GEN. JOHN, 44, 71, 215.
GREAT MEADOWS, battle of, 5.
GREENVILLE, Fort, 12.
treaty of, 12, 122, 146, 179.
GRIFFITH, WILLIAM LANDS, 130, 180, 181, 232, 234.
GRIMSHAW, WILLIAM, 181.

HAMILTON, killing of, 149, 194.
HARMER, COL. GEN., 11, 118, 122, 224.
Fort, 1, 71.
treaty at, 1, 71.
HENNEPIN, 3.
HISTORY, GENERAL, 1–12.
HOLLAND LAND COMPANY, 127, 128, 139.
HOWE, LORD, Occupation Philada., 20.
HUIDEKOPER'S LESSEE *v.* DOUGLASS, 140, 142.

IMPROVEMENTS, 88, 96, 104, 106, 108, 110, 115, 118–158.
INDIANS, 8, 9, 10, 13, 16, 70, 118–175.
In pari materia, 100, 101, 115, 116, 144.
INTERPRETATION, Act of 1792, 121, 123, 124, 126.

IROQUOIS, 13, 175.
IRVINE, WILLIAM, GENL., 16, 22, 24, 25, 52, 223.
Report, Agents, 196–210.

JOHNSTON, S. P., Judge, 77.
JOLIET, 3.
JOURNALS, Allen's, 20.
Croghan's, 4, 175.
Post, Christian Fred., 174.
Porter's, Andrew, 63.
Washington's, 5, 174.
Weiser's Conrad, 4, 173.
JUDICIAL DECISIONS, 31, 37, 56, 57, 88–90, 134, 140.
JUMONVILLE, 5.

KEBLE, JOHN'S BLOTTERS, 134.
KING BEAVER, 174, 175.
KITTANNING, 13, 15, 173, 174.
KUSHCUSHING, 174, 201, 202, 207.

LAKES, 3, 66.
Erie, 3, 66–69, 102, 103, 225.
LAND COMPANIES, 127–132.
LA SALLE, 3, 5.
LAWRENCE *v.* HUNTER, 163, 164, 165.
LAWYERS, 124, 191–193.
LE BŒUF, 4, 74, 102–116, 174, 226, 227.
LEE, ARTHUR, commissioner, 68, 221.
LEET, DANIEL, lands, 24.
district, 24, 26.
surveys, 92.
LEGIONVILLE, 11, 122.
LIMITATIONS, Statute of, 158–165.
pedis possessio, 158, 165.
presumption of ouster and color of title, 158–165.
LOGAN, Indian Chief, 10.
LOGSTOWN, 4, 174.
LONG FACE AND LONG HAIR, 44.

MANDAMUS PROCEEDING, 132.
MARKS, GROWTHS, BLOCKS, 35, 36, 37, 38, 39.
MARQUETTE, 3.
MARSHALL, Chief Justice, 140.
MASON AND DIXON'S LINE, 58.

MASSACRES, 10, 11, 118.
MAUMEE, battle of, 12, 122.
McCLEAN, ALEXANDER, surveyor, 22, 197, 204, 207, 210.
Line, 22, 197, 204, 207, 210.
Surveys, 25, 79.
McCLEAN, ARCHIBALD, 58, 59.
McINTOSH, LACHLAN, GEN'L, 176, 220.
Fort, 1, 13, 176, 177, 220.
MEREDITH AND DAY, 130.
MESNARD, 3.
MOGULBUGHTITON CREEK, 18, 32, 210.
MONUMENT, Cornplanter's, 77.
MOORE, FRANKLIN, Rev., D.D., 184, 185.

NECESSITY, FORT, 5.
NEGLECT OF DEPUTY SURVEYORS, 35, 36.
NICHOLSON, JOHN, 21, 121, 128, 129.
NINTH SECTION ACT 1792, 133.
NORTH AMERICAN COMPANY, 132.
NORTHERN BOUNDARY, 58–65, 66, 69.
NUMBERED CORNER, 37.

OHIO RIVER, 6, 13, 173.
discovery of, 5, 6.
OIL CREEK—OIL, 200, 201.
OPINIONS—Gibson, 37, 56, 142, 155, 159, 161, 163.
Hepburn, 85, 162, 155.
Kennedy, 56, 156, 164.
Marshall, 140.
Shippen, 134.
Tilghman, 87, 88.
Yeates, 134, 138.
OTTAWA ROUTE, 3.
OUSTER—See Limitations.
OUT-LOTS, 81, 103–116.

PARIS, treaty of, 7.
PEDIS POSSESSIO (Limitations), 159, 165.
PENITENTIARY, WESTERN, 85.
PENN'S TITLE DIVESTED, 16, 17.
PERSISTENCE TO SETTLE LAND, 153, 154.
PHILADELPHIA, Lord Howe's occupancy, 20.
POLICY OF STATE AS TO SETTLEMENTS, 117, 119, 125, 126.

PONTIAC'S WAR, 8, 77.
POPULATION LAND COMPANY, 127, 128–132, 181, 182.
PORTER, GEN. ANDREW, 61, 62, 63, 235.
POST, CHRISTIAN, FRED., 174, 227, 228.
PRACTICE AS TO LAND WARRANTS, 130, 131.
PRESBYTERIAN CHURCH, 98.
PRESQUE ISLE, 3, 102–116.
PRESUMPTIONS OF PREVENTION, 153, 154.
  of ouster, 142, 160–165.
PREVENTION, 134–144, 148, 153.
  certificates and patents, 130.
PRICE OF LANDS, 119.
PRIME INTENTION OF ASSEMBLY, 117, 125.
PURCHASES FROM INDIANS, 1, 13, 16, 70–72.
PURCHASES FROM UNITED STATES, 66–70.

RAILROADS IN ALLEGHENY, 88, 89.
RATIFICATION, 12, 59, 65, 69, 122.
REDICK, DAVID'S, LETTER, 80, 210, 212.
REID, JAMES R., 68.
RELIGION AND CHURCHES, 82, 83.
RESERVATIONS, State, 73–78.
  Allegheny, 18, 73, 79–90.
  Beaver, 18, 73, 90–104.
  Erie, 74, 116.
  Franklin, 74, 102–116.
  Warren, 74, 102, 116.
  Waterford, 74, 102, 116.
  Cornplanter's, 75, 76.
  Irvine's, General William, 78.
  United States, 105, 108, 112.
  minor, 81, 91, 92, 93.
    by governor, 81, 82, 92, 93.
    Assembly, 102–116.
    not dedications, 82, 89, 102–116.
    use of State, 79, 82, 103.

SAWKUNK, OR SAWKUNG, 15.
SERGEANT, JUDGE, BOOK, 157, 158.
SETTLEMENT TITLES, 118–144.
SETTLERS, EARLY, 168, 169.
SHINGO'S TOWN, 15.
SHIPPEN, CHIEF JUSTICE, 134, 138.

SIX NATIONS, 13, 175, 177.
SMITH, CHARLES, statement, 150.
SNOWDEN, JAMES ROSS, 77, 78.
SOIL, property in, 81, 82, 86–90.
SOUTHERN STATE BOUNDARY, 58, 59, 60.
SOVEREIGNTY, 16, 17.
SPAIN, 2.
SQUARES RESERVED, 85, 93.
ST. CLAIR, GEN., DEFEAT, 11, 118.
STANWIX, Fort, 1.
  treaty of, 13, 14.
  Brigadier-General, 175.
STATE OF THE COUNTRY, 1–12.
  Courts, 134–142.
STEUBEN, BARON, donation, 34.
STRUCK DISTRICT, DONATION LANDS, 50, 52, 53, 197.
SUBSEQUENT CONDITION, 123, 134, 138, 142, 145.
SURVEYORS, DEPRECIATION, 25, 26.
  Donation, 41, 42.
  Surveys, 34, 35, 102, 103.

TAXATION, DONATION LANDS, 33, 56, 57.
TEMPORARY BOUNDARY, VA., 59, 60.
THEOLOGICAL SEMINARY, 86.
TICKETS—WHEELS—DONATIONS, 34.
TILGHMAN, COL., donation, 34.
TOWNS LAID OUT, 81, 102–116.
TREATIES, Fort Stanwix, 1, 13.
  Fort McIntosh, 16, 224.
  Fort Harmar, 16, 71.
  Fort Greenville, 12, 122.
  Paris, 7.
  Great Britain, 10.
TRIAL, Feigned Issue, 136.
TRIANGLE, ERIE, 66–72, 102, 125, 175.
TRIBAL NAMES, 175.

UNITED STATES, TRIANGLE, 66–69.
  State grants to, 105, 108, 112, 113, 114.
  Courts, 149.

VACATING WARRANTS, 146–149, 155–157.
VENANGO, FORT, etc., 4, 102–116, 174, 228.
  Path, 197.

VIRGINIA—CLAIM, 4, 60.
Agreement, 58, 59.
Boundaries, 58–62.
Titles, 182.

WALLACE, JOHN B., LANDS, 130, 131.
deed to Bank, 131, 232.
WARD, ENSIGN, 6, 229.
WARRANTS AND SURVEYS, 120–158.
WARREN, 102–116.
WASHINGTON, GEORGE, 4, 5, 15, 174.
Fort, 12.
WATERFORD, 102–116.
WATER-LOTS, BEAVER, 94.
WAYNE, GEN. ANTHONY, 11, 118, 122.
WEISER, CONRAD, 4, 173.
WESTERN BOUNDARY, STATE, 42, 43, 58–65.
WESTERN UNIVERSITY, 85, 86.
WILDERNESS, 117, 118, 141, 144.
WYANDOTS, 16.

YEATES, JUDGE, 134, 138.